UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD DIVISION OF JUDGES

CLASSIC FIRE PROTECTION, LLC

and Case Nos. 9-CA-44812

9-CA-44814 9-CA-44926

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 669, AFL-CIO

Eric Taylor, Esq., and Jamie Ireland, Esq., for the General Counsel

Mack Zimmer, Organizer
of Evansville, Indiana for the Charging Party

Paul L. Jackson, Esq., of Akron, Ohio
for the Respondent

DECISION

Statement of the Case

Eric M. Fine, Administrative Law Judge. This case was tried in Cincinnati, Ohio on April 27, 28, and 29, and on August 10 and 11, 2009. The charges in Cases 9-CA-44812, 9-CA-44814, 9-CA-44926, were filed on February 26, 2009, February 27, 2009, and April 28, 2009, respectively. There was an amended charge in Case 9-CA-44926, filed on May 11, 2009.1 All charges were filed by the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 669, AFL-CIO (herein the Union or Local 669) against Classic Fire Protection, LLC (herein Respondent). The consolidated complaint, as amended, alleges that Respondent violated Section 8(a)(1) and (3) of the Act by: on about February 26, discharging its employees James Patrick King, Benjamin Waldo, Rick Forsha, Robert Huff, Larry Meuse, John McKim, and Robert Ford; and by on or about February 27, late February, or early March, refusing to consider for hire or hire Daniel Cervi, Travis Anders, Aaron Shull, Matthew Macke, Michael Stethem, Jr. and Nicholas Stone because they engaged in union activities and to discourage them from doing so. The consolidated complaint, as amended, alleges Respondent violated Section 8(a)(1) of the Act by: in early December 2008, interrogating an employee regarding his union activities; around February 24, threatening employees with discharge because of their union activities; and around February 26, threatening employees with unspecified reprisal because of their union activities.

¹ All dates are 2009 unless otherwise specified. Pursuant to a motion made by counsel for the General Counsel, I issued an order on July 17, 2009, consolidating Case 9-CA-44926, with the other cases listed above.

Continued

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs by the General Counsel, the Union and the Respondent, I make the following²

Findings of Fact

I. Jurisdiction

Respondent, a limited liability company, with an office and place of business in Westerville, Ohio, has been engaged in the business of installing automatic fire suppression sprinkler systems in residential and commercial buildings. During the past 12 months, in conducting the described business operations, Respondent performed services valued in excess of \$50,000 for customers outside the state of Ohio. Respondent admits and I find it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.³

II. Alleged Unfair Labor Practices

Respondent, during the course of the hearing, admitted that Matt Meyer is Respondent's owner, and that John and James Allinder were its foremen and/or superintendents and that all three were its supervisors and agents within the meaning of Section 2(11) and (13) of the Act. Meyer and John Allinder appeared as witnesses in this case. Union organizers Todd Johnson, Malcolm Zimmer, and William Flanklin played roles in the Union's efforts to organize Respondent and they also appeared as witnesses.⁴

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² In making the findings herein, I have considered all the witnesses' demeanor, the content of their testimony, and the inherent probabilities of the record as a whole. In certain instances, I have credited some but not all of what a witness said. See *NLRB v. Universal Camera Corporation*, 179 F. 2d 749, 754 (C.A. 2), reversed on other grounds 340 U.S. 474 (1951). Further discussions of the witnesses' testimony and credibility are set forth herein.

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³ During the opening day of the hearing, Respondent acknowledged it was engaged in commerce during the period of August 2008, to April 27, 2009, while objecting to the term "all material times" specified in paragraph 2(c) of the initial consolidated complaint issued on March 31, 2009. However, in its answer to the complaint in Case 9-CA-44926, issued on June 4, 2009, Respondent admitted in response to paragraph 2(c) therein that it was engaged in commerce at all material times.

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⁴ At the outset of the hearing, I granted a motion to sequester the witnesses. Neither Zimmer nor Franklin were identified to me as potential witnesses at that time by either the General Counsel or the Union. Zimmer, while not an attorney, actively participated in the hearing as a representative of the Union by raising objections and questioning witnesses. Franklin was in and out of the hearing, and admittedly heard portions of testimony including Johnson's testimony, regarding a February 5 meeting, the subject of which Franklin was subsequently called to testify. When Zimmer and Franklin were called to testify by counsel for the General Counsel there were objections raised against their being permitted to testify by counsel for Respondent, in which it was argued their presence during the hearing violated the sequestration order. I overruled the objections to the extent that I refused to bar the testimony of either witness. In this regard, I concluded that, knowing the circumstances under which they testified, I could determine the truthfulness of their respective accounts. However, simple preparation by counsel for the General Counsel should have alerted them to the fact that Franklin attended a meeting about which Johnson was going to be called to testify, and assuming counsel for the General Counsel, as contended at the hearing, did not initially intend

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A. Meuse and McKim are hired by Respondent in December 2008

Johnson became aware around the beginning of October 2008 that Respondent was performing work at the Shipp Avenue Student Housing project for the University of Louisville, in Louisville, Kentucky (the Shipp Avenue job). Johnson testified he contacted union member Larry Meuse and asked Meuse to apply for a job at Respondent, which Meuse did around the beginning of December 2008. Meuse, a journeyman sprinkler fitter, testified that around December 5, Johnson asked Meuse to try and obtain employment with Respondent at the Shipp Avenue site. Meuse called Meyer on December 5. Meuse told Meyer Meuse' qualifications, and that Meuse had been doing sprinkler work since about 1997. Meuse testified he did not submit an application or resume. Meuse testified he misrepresented his work history to Meyer by naming a non-union company as a prior employer although Meuse had not previously worked there. Meuse explained he thought Meyer would not have hired him if Meuse disclosed his union background. Meuse testified that, during the initial call, Meyer asked if Meuse had a helper and as a result Meuse brought Josh McKim to the job site.

to call Franklin as a witness, simple caution should have led them to instruct Franklin that he 20 should not have been in the hearing room during the taking of testimony. As such, counsel for the General Counsel are forewarned against engaging in this conduct in the future, as I find the sequestration order was violated concerning Franklin's testimony. As to Zimmer, he appeared as a representative for the Union at the hearing in the examination of witnesses. As such, had I been notified at the outset of the hearing of Zimmer's role and that he was also going to serve 25 as a witness. I would have likely granted a request to allow him to remain in the hearing room and testify. However, no such request was made prior to the taking of testimony thereby precluding me from hearing any objections Respondent may have had, or to make any accommodations to Respondent. Thus, I find the spirit of the sequestration order was violated by the manner in which Zimmer was called as a witness. As set forth above, I have taken into 30 consideration Franklin and Zimmer's presence in the hearing in evaluating the credibility of their testimony.

⁵ Meuse testified that, during the call, Meyer asked Meuse if Meuse was union, and Meuse said no. Meuse testified Meyer told Meuse this was a non-union company, and Meuse replied he was a non-union guy. I do not credit this aspect of Meuse testimony in the face of Meyer's denial that these remarks occurred. As will be seen later in this decision, Meuse misstated, in his testimony, other remarks he initially alleged to be made by Meyer concerning the Union. In this regard, Meuse' initial testimony concerning those other remarks was contradicted by a recording Meuse had made of the conversation. Thus, considering Meuse' demeanor, I do not find his uncorroborated testimony concerning Meyer's remarks about the Union to him during their initial phone call to be reliable. Accordingly, the Section 8(a)(1) allegation raised in paragraph 5(a) of the consolidated complaint, as amended, is dismissed.

On the other hand, I have credited Meuse' testimony, set forth later herein, concerning favorable remarks he received concerning his job performance by both Meyer and John Allinder. First, the record established Meyer called Meuse shortly after the February 26, termination, and indicated to him that he was not opposed to bringing him back to work. I do not find it credible, in the circumstances here, that Meyer, who was opposed to having his workforce organized, would have taken such action for just an average employee as Meyer and Allinder attempted to describe Meuse at the hearing. I do not credit either Meyer or Allinder on this point. I also find Meuse was left in charge of the site on at least two occasions during Allinder's absence because, as Meuse described, Respondent's officials viewed him as a good worker and a trusted employee.

Meuse began working for Respondent on December 9, 2008, at the Shipp Avenue site. During the first two weeks he worked for Respondent, Meuse was paid by the use of 1099 tax form. The evidence reveals that, after his first two weeks, Meuse was hired as an employee, and he was placed on Respondent's regular payroll for its employees. Meuse testified that, at the time he began working for Respondent, John Allinder, McKim, and Jordan Williamson also worked for Respondent at the Shipp Avenue site.

Meuse identified a map of the Shipp Avenue project. Meuse testified that when he started only building 2 was complete in terms of sprinkler installation. Meuse testified he worked on buildings 1, 3, 6, 7, and 8 between December 9, 2008 and his February 26, termination. He credibly testified Respondent still had to work on buildings 9A, 9B, 10A, 10B, and 11A, and 11 B on phase 1 of the project as of February 26. Meuse credibly testified that while there were only three buildings left for sprinkler fittings to be installed as of February 26, those buildings were twice the size of the buildings previously completed, which is why, for example, they were referred to as 9A and B. Meuse identified a document containing the square footage of the buildings on the site, which he testified showed the buildings needing installation as of February 26, were a combined 194,472, square feet, while the buildings he had worked on for installation the prior three months were 148,050 square feet.

Meuse credibly testified Meyer told him that he was going to try to get Meuse to Respondent's WSU job in the Dayton, Ohio area. However, Meuse told Meyer that Meuse did not have a license to work in Ohio so Meuse did not go to WSU.⁶ Meuse credibly testified John Allinder asked him a couple times if Meuse would travel with Allinder to Virginia to work at Virginia Tech. Allinder also asked Meuse if he would be willing to travel to work in Lexington. Meuse testified he did not need special licensing to work in Virginia. Meuse credibly testified he told Allinder that Meuse would to travel for Respondent.

Meuse credibly testified as follows: Prior to February 26, no one at Respondent complained about Meuse' work. Rather, Allinder told Meuse he had done a good job, and Allinder was pleased with Meuse' performance. Allinder left Meuse in charge of the site during Christmas week 2008 in Allinder's absence. Meuse testified that, in the beginning of February, Allinder's son became ill and was hospitalized, at which time Allinder took another week off. Meuse testified he was left in charge of the site with Williamson and McKim working. Meuse testified when Allinder returned to the site from Allinder's time off, Allinder told Meuse he had done a fine job. Meuse credibly testified he was never told by Meyer or Allinder that Meuse' job was temporary. Meuse testified Meyer told Meuse he could work on phase 2 of the job when that started in Louisville. Meuse testified he called Meyer twice requesting a pay raise. He testified the calls were at the beginning and end of January. Meuse testified Meyer told him no concerning an increase, but Meyer stated he would keep Meuse working. Meyer also complimented Meuse' performance.

McKim worked for Respondent from December 9, 2008, until February 26. McKim had worked with Meuse in the past as Meuse' apprentice and he worked as Meuse' apprentice at Respondent. McKim testified he spoke with Johnson before he started working for Respondent. McKim credibly testified he was told by John Allinder that phase 1 of the Shipp Avenue job was supposed to be completed around June 2009. McKim testified Allinder told him phase two of the project was supposed to start in the Fall of 2009. McKim credibly testified that, in December 2008, Allinder asked him if Respondent had other jobs if he would be able to travel with

⁶ At the time of his testimony, in April 2009, Meuse had not obtained an Ohio license.

Respondent. Allinder stated Respondent had one job in Ohio, and there was one in Lexington, Kentucky coming up. McKim testified he had this type of conversation with Allinder a couple of times. McKim testified he would have traveled to these sites to work. McKim testified Allinder never expressed concerns with McKim about the quality of the work until February 22 or 23, when Allinder expressed a concern about the pace of the drilling. McKim testified he was not doing drilling at the time. McKim testified he was never told by any Respondent official that he was a temporary employee.⁷

B. Pre-February 5 union activity

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Johnson testified he visited Respondent's Wright State University jobsite in Fairborn, Ohio, which is near Dayton (WSU job) on January 22, along with Union organizers Zimmer and Franklin. Johnson and Zimmer's credited testimony reveals Foreman James Allinder and employees Joe Pine and Kevin Coffey were at the jobsite at the time of the visit. Zimmer spoke with James Allinder, Pine and Coffey about union wages and benefits during the visit, and he gave them business cards. Zimmer testified Allinder told Zimmer that Allinder had been in the Union for short periods of time. Zimmer asked him how the job was going. Zimmer credibly testified Allinder told him they were behind, that something broke and they lost a lot of antifreeze. Allinder also told Zimmer that "illegal Mexican carpenters were shooting nails in our pipe." Zimmer testified Allinder told him Respondent had to back charge the carpenter contractor for the damage caused by the nails. Zimmer testified Allinder had two issues: the nails in the pipe and someone was cutting pipe to make way for their installation.

Franklin testified he became acquainted with Meyer in late January when Franklin called Meyer and asked him for a meeting. Franklin testified he thought he sent Meyer a business proposal around January 28, which he described as a proposal he sends to contractors, and then he follows up with a call to see if they received the proposal to set up a meeting.

Mckim credibly testified that he and Meuse told Shipp Avenue Foreman John Allinder they were members of the Union on January 29. Mckim testified they were at the jobsite at the time, and they were following Johnson's instructions in revealing their pro-union status to

⁷ I have credited Meuse and McKim's testimony, as set forth above, and have concluded that Respondent's officials were satisfied with their job performance during the course of their employment. This conclusion is bolstered by Meyer's call to Meuse shortly after Meuse and McKim's February 26, termination wherein Meyer stated he was not opposed to bringing Meuse back to work. When Meuse asked Meyer about bringing McKim back to work, Meyer hesitated in making a commitment to do so, not because of McKim's job performance, but rather he told Meuse of potential legal problems in bringing back too many union supporters. The credited testimony reveals Meyer also had a phone call with McKim on February 20, wherein Meyer stated it was his intent to keep Meuse and McKim on the job, although Meyer planned to layoff the remainder of the union supporters. Given this backdrop, I do not find Allinder's testimony as persuasive when he described Meuse and McKim's work performance as just average, and stated he did not find Meuse and McKim's performance to be as much of a problem as the rest of the men referred by the Union. While he first labeled their work as problematic, Allinder then testified he did not have a problem with Meuse or McKim's work. When asked if he ever told Meuse and McKim that he had a problem with their work, Allinder testified he did not tell them he had a problem with their work, but would just make suggestions as to how to do things better. Allinder was clearly aligned with Respondent's cause during the hearing. Considering his demeanor, and the fact he was testifying in front of Meyer, his boss, I also do not credit Allinder's claim that he never told anyone on the Shipp Avenue job they were doing a good job.

Allinder. McKim testified he recorded the date of the conversation in his calendar. He testified Allinder responded he did not have a problem with their being union. Meuse confirmed they told Allinder of their union status. Meuse testified that, thereafter, he had between two and four conversations with Allinder about the Union's benefits.

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C. The February 5, meeting

Johnson, Zimmer, and Franklin met with Meyer on February 5, at a restaurant in the Dayton, Ohio area. Johnson testified the meeting lasted around 30 minutes and they talked about wages, fringe benefits, and Meyer's manpower needs. Johnson testified Meyer stated he was falling behind and he was going to need manpower at Shipp Avenue, and he asked the union officials to send him resumes. Johnson responded he would send resumes. Johnson testified Meyer also stated that he had a project beginning in Rochester, New York and in Blacksburg, Virginia at Virginia Tech. Meyer asked Johnson if he could find out if Meyer needed a contractor's license to perform sprinkler fitters' work in New York and Virginia, and Johnson agreed to do so. Johnson testified Meyer stated concerning Meyer's manpower needs at Shipp Avenue that the job was going to last around a year and a half. Johnson was told Respondent was working on phase 1 of the job which had to be completed in June 2009. Johnson testified, as best he could recall, he was told that phase 2 of the job was to begin when phase 1 was complete. Johnson testified they discussed a wage rate of around \$17 an hour and \$1.90 an hour for healthcare benefits. Johnson testified Meyer stated he had no problem paying the healthcare benefit rate for the men Johnson would be sending him. Meyer liked the idea the Union's jurisdiction was spread out and he could use the Union's manpower in another state if Meyer had work in Virginia or New York. Johnson testified Meyer also mentioned a job pending in Alabama, one pending in Florida, and one in Kent State, Ohio. Johnson testified there was no discussion about signing a contract during this first meeting. Johnson testified he agreed to look at numbers and that they would meet again.8

Franklin confirmed that, during the February 5 meeting, Meyer asked the union officials about licensing in Virginia and New York, and they agreed to obtain the information for him as Meyer stated he may have jobs in those states. Meyer gave Franklin his business card during the meeting. Franklin testified Meyer indicated he was behind on the Shipp Avenue project, and might need people for WSU. Franklin testified Meyer did not say how many people he would need or how long he would need them. Franklin testified Meyer did not state he would only need people on a temporary basis. Franklin testified Meyer never used the term temporary employment. Franklin testified that, during the meeting, Meyer stated he wanted to have a one week contract. However, Franklin did not recall any discussion about the amount of time the union members would work at the job. Franklin testified he did not understand that Meyer wanted the employees for one week; rather he wanted a contract for a week. Franklin then testified Meyer spoke about a week to week contract. He then testified, "I'm not 100 percent positive it was a week to week or one week."

Zimmer testified that, during the meeting, they discussed wages, and the availability of manpower. He testified they also discussed jobs Meyer had or that he felt he was going to have. Zimmer testified Meyer stated he needed a lot of sprinkler fitter help at the Shipp Avenue project. Meyer stated he needed to get the hourly wage down to around \$18 an hour. He testified Meyer also stated he was going to need help at the WSU project. Zimmer testified Meyer did not say he wanted a week to week agreement. Rather, Meyer said he wanted to be

⁸ Johnson testified that following the February 5, meeting, he obtained the information pertaining to New York and Virginia licensing, and he gave it to Meyer.

able to evaluate the men on a week to week basis. Zimmer testified Meyer asked them to get him some people and Zimmer thought it was four to start. Zimmer testified Meyer stated he needed help for Louisville immediately, but he did not need anyone for WSU at that time.

Meyer testified the February 5, meeting was set up through Franklin who contacted Meyer and wanted to share the benefits of Respondent being involved with Local 669. Meyer testified Franklin had called him on several occasions prior to the meeting and sent Meyer some emails. Meyer testified he thought, during the meeting, he inquired about wage rates on a weekly basis for Local 669 laborers, and he wanted to know the hourly rate for sprinkler fitters from Local 669. Meyer testified he stated he needed some type of weekly agreement because he did not have enough work secured to hire a large work force. Meyer testified the discussion was in reference to the Louisville project, because Respondent did not need any additional labor at WSU. Meyer testified he thought there was a potential for needing additional help at Louisville down the road because the buildings were larger than the buildings at WSU. Meyer testified that, at the time of the conversation, he did not need additional labor at either site. He testified he was just gathering facts to determine what he might do in the future. Meyer denied telling Johnson that Respondent had a project in Virginia, Alabama, or Florida. Rather, Meyer testified he told Johnson of some proposed projects in Virginia and New York, and he did not know whether Edwards Construction, the general contractor, was going to move forward with those projects. Meyer testified he did inquire with the union officials about the licensing requirements in those states.

The credited testimony concerning the February 5, meeting, reveals: Franklin contacted Meyer and wanted to share the benefits of Respondent's being involved with Local 669, and as a result Meyer met with the union officials. During the meeting, Meyer inquired about the Union's wage and insurance rates on a weekly and hourly basis and was told the Union wage and insurance rates. Meyer testified as, confirmed by Franklin, that Meyer stated he needed some type of weekly agreement. The Union officials credibly testified Meyer stated he was falling behind and he needed help at the Shipp Avenue job in Louisville. Both Franklin and Zimmer credibly testified Meyer did not inform the Union officials during the February 5, meeting that the employment of the Union referrals would be temporary. Furthermore, the actions of Franklin and Johnson in sending Meyer resumes for Union members following the meeting underscores that it was their understanding that these workers were not being hired on a temporary basis, although Zimmer's testimony reveals that Meyer wanted the opportunity to evaluate the Union referrals before making a long term commitment to them.9 I have concluded as the Union officials testified, Meyer told them during the meeting that he needed immediate help at the Shipp Avenue project, prompting them to send him resumes following the February 5 meeting. 10 I find that Meyer did not tell them the employees were going to be temporary. I also

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⁹ I do not credit Respondent's claims that the Union referred employees were only temporary hires. For example, the evidence reveals Respondent labeled Meuse and McKim as temporary in its position statement to the Region, although both were hired in December, and had been hired prior to other non union referrals who Respondent labeled as full time. Respondent had no justification for this, other than its knowledge of Meuse and McKim's prounion status. I find Respondent's labeling the other union referrals as temporary employees was also part of a pretextual attempt to justify their termination, or limit their backpay.

General contractor Edwards' project records for the Shipp Avenue show on January 16, Edwards concluded Respondent required additional staffing to meet production. Edwards records show that on January 29, Respondent continued to delay inspection, and from February 3 to 20, Edwards was noting on a daily basis Respondent "needs to staff up immediately." Edwards' records support the testimony of the Union officials that Meyer told them on February Continued

find, as Meyer and Franklin testified, that Meyer told them he had potential projects in New York and Virginia, and asked them to find the state licensing requirements. I do not credit the testimony that Meyer told them he had secured work in those states, or any other state during the meeting, save Respondent's ongoing projects at Shipp Avenue and WSU.

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D. Events following the February 5, meeting

James (Patrick) King is a four year apprentice sprinkler fitter, and a participant in Union's apprenticeship program. King testified Johnson contacted King about Respondent and they took King's resume to Shipp Avenue job site on February 6 where they met with John Allinder. Allinder said they were behind and needed help, and he would forward King's resume to Meyer. King credibly testified he called Meyer on February 9, at which time, Meyer said Edwards, the general contractor, had a problem with union guys working on the job. Meyer stated he thought it would be resolved that week and King could probably go to work the following week.¹¹ King testified that, during the call, Meyer never said King's employment would be temporary.

On Saturday, February 7, Johnson emailed Meyer copies of Aaron Shull and King's resumes. In the email, Johnson told Meyer that Johnson stopped by the Shipp Avenue job on Friday and introduced Shull and King to John Allinder. Johnson stated they both had experience installing Blaze Master pipe, that they gave their resumes to Allinder who stated he would be faxing them to Meyer. On February 7, Shull also emailed his resume to Meyer stating he was a journeyman sprinkler fitter and he had recently spoken with Allinder. Shull's address listed on the email was in Louisville. Shull's resume stated he was willing to travel. He listed the Union's apprentice training on the resume. Meyer responded to Shull by email dated February 7, stating he would be in touch with Shull early next week.

Franklin testified that he and Dan Cervi went to the WSU job site on February 9, and spoke to Foreman James Allinder. During the conversation, Allinder said they were three or four buildings behind. Franklin told Allinder here is some manpower for you, and Cervi gave Allinder his resume. Allinder said he would give the resume to Meyer. Franklin testified Cervi told Allinder that he was on a project for about a year in Arizona working with plastic pipe. On February 9, Franklin also faxed Cervi and Travis Anders' resumes to Meyer. Franklin stated on the cover sheet of the fax that he introduced Cervi to Allinder earlier that day. Franklin testified he met with Mike Stetham, Matt Macke, and Cervi on February 10, at a restaurant in the Dayton area. He testified he told them about Respondent and asked them to send a resume there. Franklin gave the named attendees Meyer's email address.

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^{5,} that Respondent was behind at Shipp Avenue and needed help, and I have discredited Meyer's claims to the contrary.

he fore they began working for Respondent. Meyer then testified he might have had a phone conversation with one or two of them, but he did not recall which ones. Meyer later testified he might have had a conversation with King before he was hired. However, Meyer denied stating anything to King about Edwards not wanting union workers on the site. I did not find Meyer's denial to be convincing here, particularly when Edwards records show its officials thought Respondent needed additional staffing as early as January 16. Edwards daily records serve to corroborate King's testimony that there was a reason for Respondent's delay in hiring the union referrals, and it was not because Respondent did not need immediate help at the Shipp Avenue site as Meyer contended.

Johnson testified that he, along with Zimmer, visited the WSU job on February 12. Johnson saw James Allinder at the site, along with Respondent employee Travis, whose last name Johnson did not know. Johnson testified he spoke to Travis about Union benefits and wages, and gave him a business card. He testified Zimmer spoke to Allinder.

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King credibly testified that: Meyer called him on February 16. Meyer told King he was going to give him a job to start on February 17. During the call, they discussed King's resume and Meyer said he had quite a bit of work if King was able to travel. Meyer stated there was a big job in Virginia starting that summer and he wanted to know if King would be willing to go to Virginia to work. King stated he would be willing to travel. Meyer offered King \$16 an hour, and stated King's wages could be increased after he started working. King testified Meyer mentioned several other jobs, the names of which King could not recall.

On Tuesday, February 17, 2009, Johnson emailed Meyer stating he had faxed Robert
Ford's resume, and he would also email a copy. The email stated Ford had Blaze Master
experience, and he could start working on February 18. Ford's resume stated he was willing to
travel. The resume included the Union's apprenticeship program. Johnson sent Meyer a follow
up email on February 17, stating that he had another member Robert Huff who was ready to
begin work the next day. The email stated Huff was willing to travel and had experience with
Blaze Master pipe. On February 18, Johnson emailed Huff's resume to Meyer. Ford began
working for Respondent on February 18.

Franklin sent Meyer an email, dated February 18, asking for a 30 to 40 minute meeting with Meyer to explain how the Union could fit in Respondent's business plan and help Respondent become more "productive, profitable, and valuable." Meyer responded he would contact Franklin to set up another meeting.

Johnson credibly testified that: Johnson had phone conversation with Meyer on February 19. Johnson discussed with Meyer Respondent's additional manpower needs at the Shipp Avenue, and Johnson told Meyer that he had three more union members ready to begin work on February 20. Johnson asked Meyer about Johnson's faxing their resumes to Meyer and Meyer stated to fax them. Meyer stated "if those guys are as good as the ones you sent me so far, go ahead put them to work. I'll look at the resumes later. Just go ahead — they can start tomorrow." Meyer stated he needed more manpower then just three men. Meyer stated he was going the Louisville project the next day and he would meet with Johnson and they could discuss Meyer's additional manpower needs. Johnson referred Waldo, Huff, and Forsha to the Shipp Avenue job and they began work on February 20.¹² Johnson testified, during the February 19 call, Meyer did not state he would only need the men on a temporary basis.

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Johnson credibly testified to the following: Following Johnson's call with Meyer, Johnson and Zimmer met with John Allinder on February 19, in the presence of Jordan Williamson, an employee of Respondent working at the Shipp Avenue job. The meeting was held at a restaurant in Louisville, Kentucky. During the meeting, Allinder stated Respondent was behind and needed manpower for the Shipp Avenue project. Johnson told Allinder the Union had three or more employees coming the next day. Allinder said he needed seven more employees. Allinder said the employees they hired in the past week, who were members of the Union, were working out well and doing a good job. Johnson discussed the Union's wages and benefits with Allinder. Allinder liked the Union's health insurance and stated he would like to become a

¹² Johnson testified he emailed and faxed resumes to Meyer for King, Shull, Ford, Huff, and Ben Waldo between February 5 and February 19, 2009.

member to obtain union benefits. Johnson gave Williamson a union sweatshirt and a T-shirt at Williamson's request. Johnson told Allinder the Union officials were going to meet with Meyer on February 20, in Louisville, to discuss the possibility of an agreement between Respondent and the Union. Johnson discussed the Union's residential rate with Allinder, which was lower than the Union's commercial rate. Johnson told Allinder the entry-level wage at the residential rate was about \$10 an hour.¹³ In sum, Respondent hired the named union referred employees on the following dates: King, February 17; Ford, February 18; Huff, Forsha, and Waldo, all on February 20.

Allinder testified that, prior to February 26, Johnson took Allinder out to dinner on a couple of occasions. Allinder testified he thought Johnson took him out to dinner as a friendly gesture since Allinder was from out of town. Allinder testified, during dinner, Johnson briefly discussed information about Local 669. Allinder testified "I think he gave me a packet, some union literature or something. I think one of them required a signature." Allinder testified he did not sign anything and he did not read it. Allinder denied telling Johnson that he wanted to be a union member. Allinder claimed he did not expect Johnson to try to convince him to be a union member, although he admitted he assumed there was going to be some talk about the Union. Allinder testified he knew Johnson was working for the Union and there was some union talk at both meetings. Allinder testified Johnson brought Williamson a union sweatshirt but Johnson said he did not have one in Allinder's size so he would bring him one later. Allinder testified he did not ask Johnson to bring it. Allinder testified Johnson gave him a union sweatshirt some time before February 26. Allinder later acknowledged it was possible he asked Johnson for a union sweatshirt. Allinder testified that, during one of his meetings, he thought he had a discussion with Johnson about the drilling crew not doing the proper work. Allinder testified he also told Johnson that Allinder had some issues about Meuse and McKim's performance.

I have credited Johnson's testimony, as set forth above, concerning his contacts with Allinder over that given by Allinder. First, Allinder attempted to understate his Union activity. I did not find him to be as naïve as he claimed when he attempted to portray his meetings with Johnson as friendly gestures rather than their purpose being Johnson's efforts to sign the employees up. In this regard, Allinder knew Johnson was a union official, who met with Allinder twice, gave him union literature, as well as a free union shirt. Allinder impressed me as a bright and calculating individual, who knew the Union was attempting to organize Respondent's employees. Allinder also claimed he told Johnson about Meuse and McKim's alleged poor performance. However, he also testified they were at least average employees and he only gave them the type of instruction a foreman generally gave to his crew. Thus, I do not credit Allinder's claim that he complained about Meuse and McKim's performance to Johnson. I also, for the reasons set forth above, have concluded that Respondent viewed Meuse and McKim as better than average employees. Johnson credibly testified he met with Allinder on February 19. Allinder claimed he was away visiting his son at the hospital from February 14 to 19. Allinder admitted these dates were just an estimate. Allinder's claiming of the time of his absence from the site is somewhat suspect, in that it would seem it would have been relatively easy to know precisely when he was away, given the circumstances of his departure. In any event, I have credited Johnson's testimony as to the timing and content of their February 19, meeting.

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¹³ Johnson testified someone earning \$10 an hour would be doing entry level work which includes getting tools ready, drilling holes, preparing sprinkler heads with tape, and cutting pipe.

E. The February 20, meeting

Johnson and Zimmer met with Meyer on February 20 at a Holiday Inn in Louisville. Zimmer testified they were continuing what he would call negotiations for a contract. He testified the Union had supplied Respondent with men, and the Union felt it was time to get something down on paper because they had seven or eight union men working for Respondent with no agreement. Zimmer testified that was the reason for the meeting as well as Meyer needed more men. Zimmer testified that, during the meeting, Meyer stated he needed some \$10 an hour drillers, and he needed three more installers. Zimmer testified the installers could be journeyman or apprentices, but they had to have experience with plastic pipes. Zimmer testified the Union officials asked if Meyer was satisfied with the men they had sent him, and he said he was. Zimmer testified they started talking about wages, and the Union stated they were fairly flexible for the type of work Meyer was doing which was considered residential work. Meyer was told the Union had a lower rate for residential work than for industrial work. Meyer told the Union he could pay around \$18 to \$18.50 an hour for the fitters, and they told him they thought that was workable.

Zimmer testified he asked Meyer where he thought his employees at WSU and Williamson at the Shipp Avenue project could be placed in the Union's apprenticeship program. Zimmer testified Meyer became adamant that these employees did not want to be in the Union. Zimmer testified Meyer stood up and said his people did not want the Union. Zimmer responded he disagreed because the Union had some support at WSU with Meyer's employees who were interested in joining. Zimmer testified the Union officials told Meyer this is going to happen because they were having negotiating meetings right now. Zimmer testified Meyer became extremely agitated stating all he would ever do is look at a one-week agreement, and he stated he was not happy with the production of the drillers referred by the Union. Zimmer testified this all happened in 30 seconds, as soon as Zimmer mentioned placing Williamson in the apprenticeship program Meyer was out the door in that Meyer was packing up his papers and going out. Zimmer testified that was how the meeting ended. Zimmer testified Meyer's remark about the drillers' production came out of nowhere. Zimmer testified that prior to his raising the placement issue of Respondent's employees under the Union's contract; Meyer never said he was dissatisfied with any of the labor the Union had provided.

Zimmer testified the meeting lasted between 45 minutes to an hour. Zimmer testified he brought Meyer a book showing the Union's insurance, and benefits. Zimmer testified that, during the meeting, they were negotiating in that they discussed wages, and Zimmer had spoken to his bosses at the national level about getting wages down to where Meyer thought he needed them as they were discussed in the February 5 meeting. Zimmer testified that, at the beginning of the February 20 meeting, Meyer was happy with King and Ford, and he said he wanted three more drillers so he could pull more experienced guys to hang pipe.

Johnson testified that, during the meeting, Meyer stated he had just bought ladders, tools and drills for his men on the Louisville project. Johnson testified they discussed wages and they talked about how good a job the men the Union had sent were doing, with Meyer stating that they were good workers. Meyer stated that he needed more manpower, but he was looking for cheaper manpower. Johnson testified they discussed \$10 an hour for employees as a way for Johnson to get Meyer some less expensive men. Johnson testified that they again discussed wages, benefits, and some type of an agreement. Johnson testified Meyer agreed to meet again on February 26, to take a look at some type of an agreement as well as wages and discuss it further at that time. Johnson testified Meyer discussed a week to week or a one week contract. Johnson testified that, during the meeting, Zimmer told Meyer that they would discuss

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a week to week agreement with their boss, that they did not know if they could do that, but they would get back to Meyer and let him know on February 26.¹⁴

Johnson testified that, during the February 20 meeting, Johnson asked Meyer how he wanted to place employees such as Williamson currently working for Respondent in an apprenticeship program under any agreement with the Union. Meyer responded his employees were not interested in a union. Johnson testified Meyer stated only the union members would be working under a week to week project agreement, and not employees working for Respondent who are not union members. Johnson testified once Meyer made that comment the meeting ended.

Meyer testified he had been to the Shipp Avenue site during the morning of February 20, prior to attending the meeting with the union officials on that date. Meyer testified he and John Allinder met at the jobsite and Allinder expressed concerns about the quality of the work performed by the union referrals, and whether they actually had the experience indicated on their resumes. Meyer testified the February 20 meeting with the Union was a couple of hours after he became aware of John Allinder's concerns about performance at the job. Meyer testified when he met with the union officials they did inquire about the performance of the recently referred union employees. Meyer testified he did not recall his response, but that he probably said okay since it was not fair to evaluate someone who had only worked a short time. Meyer testified that, at that point, the union officials wanted to talk about the benefits of the Union. Meyer testified he responded it was his understanding the purpose of the meeting was to discuss how to pay the employees. Meyer testified they responded Meyer should run it through his payroll or however he paid everyone else. Meyer testified at some point he became angry or upset in that he felt tremendous pressure to sign the Union's agreement. Meyer testified they wanted him to flip through their notebook, which he did, but Meyer's time was short as he had to return to Columbus, Ohio for another function.

Meyer testified Zimmer did most of the talking during the meeting. Meyer testified he recalled stating he would use the union referrals the following week, and he needed some type of one-week agreement or one-week contract. Meyer testified that, after Meyer inquired about the one-week agreement, Zimmer said he would look into it. He testified that, near the end of the meeting, the Union officials wanted to talk about Respondent employees Kevin Coffey and Joe Pine joining the Union. Meyer testified he did not have time to continue the discussion. Meyer testified he asked them to follow up with him concerning the one-week agreement and to reach some type of conclusion on Monday morning. Meyer testified he thanked them for their time and he left. When asked if he ever said his people did not want to be union, Meyer testified, "I don't recall." Meyer testified it was possible he said that as his employees indicated to him they were not interested in being involved in the Union. He testified James Allinder was in the union at one point, and the employees expressed some concern about union involvement. When asked if the union officials wanted to talk about Pine and Coffey being slotted in as apprentices or journeyman with the Union, Meyer testified he was not sure where they were going with that. Meyer testified he thought they referenced Coffey, Pine, and Williamson entering the Union. Meyer testified he did not have a response at that time. He testified that Pine, Coffey, and Williamson had expressed concern about any involvement with the Union. However, Meyer testified he did not tell the union officials that. Meyer testified the employees

¹⁴ Johnson testified he did not understand what Meyer wanted concerning the length of the contract. Johnson testified Meyer was supposed to clarify it to Johnson on February 26, but they never met. Johnson credibly testified that, prior to this meeting, Meyer had never used the word temporary with Johnson concerning the Union employees.

told him the Union showed up on both projects and his men had concerns and were uncomfortable about it.

Meyer testified he understood the whole purpose of the meeting with the union officials was to determine how to pay the union referrals. Mever testified that, prior to the meeting, he had not been told the union officials were going to present him with an agreement for him to sign. Meyer testified the meeting began at 1 p.m. and lasted 30 to 45 minutes. Meyer testified he did not think he was in collective-bargaining negotiations with the Union during the meeting. However, Meyer testified he recalled talking to Johnson before February 20 and Johnson volunteered to bring to the meeting the list of Union pay rates, and how insurance and pensions are paid into Local 669. Meyer also testified the Union officials provided him with a three ring binder containing the Local 669 agreement during the meeting. Meyer testified that, during the meeting, he told Zimmer that his employees Pine, Coffey, and Williamson were going to be taking care of in that Meyer was looking into buying insurance and figuring out a 401(k) plan for them. Mever then admitted telling Zimmer these employees had reservations about being involved with the Union. Meyer testified he was not necessarily aware at that time that the Union was having meetings with his employees and giving them union material and shirts. Meyer testified he was aware after-the-fact, but that was a "gray area." Meyer testified the morning of February 20, he purchased ladders for the extra men at the Shipp Avenue site.

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I have credited Zimmer's account of the February 20. Meyer testified Zimmer was the main spokesperson for the Union, increasing the likelihood Zimmer recalled the order of the presentation. Zimmer's recall was good pertaining to the meeting, and it was corroborated by admissions by Meyer, as well as the record as a whole. Meyer's claim that he did not think the meeting was about contract negotiations, and that it was just to determine how to pay the union referrals did not have a ring of truth. Franklin had sent Meyer an email on February 18, requesting a requesting a 30 to 40 minute meeting to explain how the Union could fit in Respondent's business plan and help Respondent become more "productive, profitable, and valuable." Moreover, Zimmer and Johnson credibly testified they discussed wage and benefit rates with Meyer, as well as Respondent's need for additional referrals. Meyer also admitted discussing the fringe benefits of his current employees with the Union. Zimmer credibly testified the Union asked Meyer how the Union's current referrals were performing, and Meyer stated he was satisfied with the work. Meyer admitted he probably responded the employees were doing ok to this question. Zimmer credibly testified Meyer abruptly terminated meeting after the Union officials brought up slotting Respondent's employees who were not union referrals into the Union's apprenticeship system. Zimmer and Johnson credibly testified Meyer responded his employees were not interested in the Union. Meyer did not deny stating his employees were not interested in the Union, stating he did not recall whether he made remark, and he admitted the feedback he received from his employees was that they were not interested in the Union. Zimmer credibly testified that it was in response to Union's insisting Respondent's employees were interested in the Union that Meyer responded by terminating the meeting, and stating for the first time that he was dissatisfied with the drilling work of the Union's recent referrals. Meyer did not confirm this statement. However, he testified that early on in the meeting, he had informed the Union the referrals had been performing ok. Yet, Meyer incredibly claimed earlier that morning Allinder had reported to Meyer that he was dissatisfied with the quality of the work of the Union's referrals. Accordingly, I have credited Zimmer's testimony concerning the meeting as his recall was good, his testimony was corroborated by Johnson and by admissions by Meyer, and by the record as a whole.

F. Events Following the February 20 meeting

McKim testified he called Meyer on the evening of February 20 and asked Meyer for a raise. McKim initially testified that, during the call, Meyer told him the temporary workers from Local 669 were probably only going to be there another week or so. McKim testified he did not consider himself to be included in Meyer's remark about temporary workers because, during the call, Meyer told him he needed McKim, Meuse, Allinder, and Williamson to keep the Shipp Avenue job going smoothly after the other men were terminated. McKim testified it was his understanding Meyer was referring to the recently referred five employees from Local 669 as being temporary. McKim testified Meyer told him that he was doing good work and that a raise would come in the future. McKim testified from his conversations with Allinder and Meyer that he was under the impression he had done a good job for Respondent.

Meyer testified he had a phone call with McKim the evening of February 20, as McKim called Meyer's cell phone to request a pay raise. Meyer testified McKim wanted to be paid the same as the newly hired laborers on the site. Meyer testified he told McKim no and explained to him Respondent was only going to use these workers, at most, another week. Meyer testified he thought McKim was comparing himself to Waldo, Forsha, Huff, Ford, and King. Meyer testified he used the word temporary with McKim. Meyer later testified that, during the call, he might have told McKim that he had to evaluate McKim's getting a raise and McKim could possibly get a raise later. Meyer testified he did not tell McKim that he was one of those temporary employees who were going to be gone in a week. Meyer testified that, during the conversation, Meyer told McKim that he was counting on McKim, Meuse, Allinder and Williamson to keep the project going smoothly when the other men were let go.

Despite Meyer's admission that he had informed McKim on February 20, that he was counting on Meuse and Mckim to keep the project running smoothly after the other employees were terminated, Meyer terminated Meuse and McKim on February 26, along with the other employees. In fact, Respondent listed Meuse and McKim as temporary employees along with the named union referrals in Respondent's position statement to the Region, and in Resp. Exh. D. When Meyer was asked when Meyer determined that McKim was a temporary employee, Meyer, referring to their February 20 conversation testified, "I didn't have a classification for him at that point." Meyer testified he could not recall when he decided McKim and Meuse were temporary employees. Meyer also testified he made a commitment to Meuse and McKim that as long as he had work in Louisville they were going to be working for Respondent. Yet, Meyer admitted firing McKim and Meuse shortly after his February 20 phone call with McKim. Meyer testified he offered Meuse his job back, and he thought the same thing happened with McKim. In fact, there is no evidence on the record that Meyer ever offered McKim his job back. While he discussed reinstating Meuse with Meuse, Meyer never gave him a reinstatement offer.

McKim testified that, around Monday, February 23, John Allinder told McKim he did not think the drilling was getting done fast enough. McKim testified Allinder had never expressed concern to him about the quality of the work prior to this conversation. McKim testified Williams, Ford, and King were mainly doing the drilling at the time. McKim testified Williamson was not referred by Local 669, and that he is not a member of the Union. Williamson was not laid off on February 26.

¹⁵ McKim later testified Meyer did not give the specific time as to how long the five new hires would work at Shipp Avenue. McKim testified Meyer said they were probably going to be let go after everything was caught up.

Johnson testified that, following the February 20 meeting with Meyer, Johnson and Zimmer decided to file a petition for an election for Respondent's employees with the Board. Johnson testified he filed a petition for election on February 23. Johnson testified that on February 23, after he filed the petition, he called Meyer at around 10:30 a.m. central time and told him that he had filed the petition. Johnson testified Meyer asked him why he filed the petition and Johnson responded Meyer had stated some of Respondent's employees were not interested in the Union and the union officials felt differently. Johnson told Meyer that he filed to protect Respondent's employees. Johnson credibly testified Meyer responded I wish you had not done that and Meyer said Respondent did not want to be unionized. Johnson testified he over nighted a copy of the petition to the Board and to Meyer.

On Monday, February 23, Johnson emailed Meyer the resume of Nick Stone stating he had Blaze Master experience. Meyer responded by email on that date at 8:03 p.m. eastern time, stating "Thanks but we are not interested in Nick, several of the existing drillers are under performing. They will need to be replaced by individuals with more experience that have been trained by Classic Fire Protection and have the ability to keep up."

Meuse testified that, around February 24, Meuse and Huff where in the breezeway of building 1 at the Shipp Avenue site. Meuse testified John Allinder came up the stairs all red-faced. He testified Huff asked Allinder why his face was red and Allinder said his blood pressure was rising. Meuse testified Allinder said Meyer was mad at him and Foody was coming down to take over the job because Allinder was not running it right. Allinder said Meyer was upset over something that Johnson had done. Allinder stated he did not know if they got rid of all of the employees how they were going to get the job done. Huff testified the conversation took place around 2 or 2:30 p.m., on February 24 or 25. Huff testified he was standing in the breezeway along with Meuse and Allinder. Huff testified he asked Allinder why his face was so red and Allinder said he had high blood pressure because he was worried that either Meyer was going to fire them or Johnson was going to pull them out. Allinder said he did not know what he was going to do because the job was so far behind. Huff testified Allinder told Meuse that Meuse ruined his life. Allinder said he did not know what he was going to do because he had to be at the Louisville site and had to go to another site.

¹⁶ Johnson testified he had faxed the petition to Region 9, prior to calling Meyer. Johnson identified a copy of the petition and cover sheet showing he faxed the petition for election to Region 9 in Cincinnati at 11:31 a.m. Johnson testified Cincinnati is in the eastern time zone, and he faxed the petition from his office in Owensboro, Kentucky which is in central time. Johnson testified he faxed the petition to the Region at 10:31 a.m. central time. The Region's fax transmission shows Region 9, faxed the petition to Meyer's fax number at 4:04 p.m. on February 23.

¹⁷ Meyer testified Johnson called him on Monday morning February 23 stating he was filing a petition for election with the NLRB. Meyer testified Johnson stated he and Zimmer thought it was in their best interest to file a petition. Meyer testified at that time he did not have a response, and he asked Johnson to fax him a copy of the petition, which Johnson eventually did. Meyer testified the Union's filing a petition did not affect the decision he made concerning terminating the employees at the Shipp Avenue project. Considering their demeanor, and Meyer's reactions at the February 20, meeting, I have credited Johnson's version of the phone call over that of Meyer.

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Allinder denied threatening any of the alleged discriminatees with termination on February 24, or at any other time. He testified he never discussed termination with anyone. He denied having any discussion with any of the employees about their employment status on February 24. However, Allinder also testified that, around the middle of February, McKim told him that McKim had a conversation with Meyer the night before about McKim wanting a raise to match everyone else, and Meyer told McKim the five workers were just temporary. Allinder testified McKim asked Allinder if that was true, and he responded, "Yeah." Yet, Allinder testified he did not recall a conversation with Meyer where Meyer told him these employees were temporary. He testified he just assumed they were temporary because there was not enough work for all of those men. I find it unlikely Meyer would have openly discussed with McKim that the new hires were temporary, but never had a direct conversation with Allinder, his site foreman about the staffing of the site. Thus, I have concluded Allinder was aware of more than he was willing to admit. This, is particularly so since, both Meyer and Allinder testified they were in daily contact about the occurrences at the jobsite. Respondent also admitted that it did not terminate the employees on February 26, for lack of work. Therefore, Allinder had a just reason to be concerned about the production at the site, if Meyer let these employees go. I have concluded that Allinder conveyed that concern to Meuse and Huff as they credibly testified.

I have credited Meuse and Huff that Allinder told them he was concerned that Meyer may get rid of all the employees, and that if Meyer did so Allinder did not know what he was going to do because the job was so far behind. Both Meuse and Huff testified in a detailed fashion, and their recall of this portion of the conversation was fairly consistent. Moreover, Meyer's statements and actions reveal he was opposed to his employees being organized, and it is likely as a result he was placing pressure on his foreman Allinder about it. McKim credibly testified he and Meuse informed Allinder that they were union supporters on January 29. Thus, I have credited Huff's testimony that, during the conversation, Allinder told Meuse that Meuse ruined Allinder's life. Meuse testified that Allinder stated Meyer was upset over something that Johnson had done, and that Allinder stated he did not know if they got rid of all of the employees how they were going to get the job done. Huff testified he asked Allinder why his face was red and Allinder said he had high blood pressure because he was worried that either Meyer was going to fire them or Johnson was going to pull them out. In the circumstances here, and considering their demeanor concerning this conversation, I have credited the testimony of both employees and find that Allinder stated during the conversation that Meyer was upset with Johnson, and that Allinder did not know how he would get the job done if Respondent got rid of the employees.

Counsel for the General Counsel argues at page 45 of his post hearing brief that:

Nearly as obvious a violation is Allinder's threat to Meuse and Huff that Meyer might discharge them and the other Union referred employees because Meyer was upset with organizer Johnson. While Allinder may have been speculating or merely offering his opinion about the consequences of union activities, the threat of potential job loss because of union activities makes the statement a threat and unlawful.

I have credited Johnson's testimony that Meyer reacted strongly in a negative fashion to Johnson's informing Meyer on February 23, that Johnson had filed a petition for election. I have concluded based on the credited testimony of Meuse and Huff that Meyer informed Allinder of the petition, and Meyer's thoughts about it. I have concluded that this led Allinder to make the statements to which Meuse and Huff testified took place on February 24 or 25, which included a linking of possibly job loss for the employees because of Johnson's efforts in organizing Respondent. I have concluded that Allinder's statements constituted a threat of job loss to employees because of the Union's efforts to organize the employees, and as such Allinder's

remarks restrained and coerced employees in violation of Section 8(a)(1) of the Act. See, *Intercon I (Zercom)*, 333 NLRB 223, 237 (2001).

Huff credibly testified that, prior to February 24, he was never disciplined while he was working for Respondent. Huff credibly testified Meyer called him at home on Tuesday evening, February 24 and told Huff he was fired for lack of production regarding drilling holes. Huff responded he had not drilled holes, that he was hanging pipe. However, Meyer said he was going to have to let him go. Huff testified he asked Meyer if it was because Huff was part of Local 669 and Meyer responded no. Huff testified Meyer called him back about 30 seconds later and told Huff he could return to work tomorrow, but it was a very temporary thing. Meyer stated he mixed up the names. Huff told Meyer that he would be there. Huff testified Meyer had never told him he was working on a temporary basis prior to February 24.

Johnson testified Meyer left him a voice mail on February 25. The voice mail and transcript thereof were introduced into evidence, with Verizon's records showing the call was placed at 6:59 a.m. (central time). The transcript of the call reads:

Hi I'm Matt Meyer. Good morning. Hey, I tried to indicate to you late in the day yesterday that your temporary laborers by the name of King and Ford, uh, they are not necessary today. I'm having some more of my guys come down and by the end of this week we're going to gradually phase your temporary laborers out period. Uh, evidently, my attorney and I will see you guys in court next week. I look forward to that. Um, everything that has been done with you has been documented. You have been nothing but dishonest and underhanded throughout the course of this entire process. Um, Todd, I can't really do anything but wish you good luck. You might want to indicate to Bob Ford and James Patrick King that they are not being paid today. I did leave them this same message on their cell phones last night so they are welcome to stay today if they so desire. Um, they are not keeping up. Um, they are slow. All your guys are slow. This is not what you promised us. Um, Todd, you know you're something else, man, you're something else. So, hey cool. We'll see you in court. By the end of the day tomorrow we are not going to need any of your guys on site. I am sending multiple crews down there. So, hey best wishes to you, man. Take care.

Johnson testified he called Meyer around 8 a.m. on February 25, after he received Meyer's voice message. Johnson credibly testified that: Johnson spoke to Meyer who told Johnson that he was going to pay King and Ford for the rest of the day, but that was their last day. Meyer told Johnson all of his guys were slow, they were underperforming and Meyer was going to phase them out by Thursday that week. Johnson asked Meyer what happened because during the February 20, meeting, Meyer told Johnson they were good employees and he wanted the Union to send him more employees, but now all of a sudden they are underperforming and are slow. Meyer responded he had not had a chance to evaluate them because they had just started. Meyer said Thursday was going to be the union members last day. Johnson testified Meyer stated, "I'm phasing all of them out, I'm getting rid of all of them." Meyer said he was bringing in multiple crews to replace them. Johnson told Meyer that, since he had let King and Ford go, they needed to be paid off. Meyer blew up and hung up on Johnson. During the conversation, Meyer told Johnson this was a temporary arrangement, and Johnson knew it was temporary. Johnson testified he told Meyer it was not temporary, all these

¹⁸ Huff credibly testified John Allinder told him more than one occasion that Huff was doing a great job and to keep up the good work.

guys were doing a good job, and Meyer was going to send them to Virginia Tech and to New York, and it was never a temporary arrangement.

On the morning of February 25, Johnson went to Respondent's Shipp Avenue site and spoke to John Allinder. Johnson testified they talked about the upcoming election. Johnson credibly testified that when he was at the site Meuse, McKim and Williamson were wearing Local 669 shirts in the presence of Allinder. Williamson was not a union member at the time, although Meuse and McKim were. Meuse and McKim were also wearing union hats.

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King testified February 25, was the last day he reported to work at Respondent. Meyer called and left a message on King's phone that night not to return to the job site that King was terminated. King credibly testified Meyer did not give any reason for terminating King, and Meyer did not ask King to call him back to explain the reasons. King never called Meyer to ask Meyer the reasons. King testified Meyer just stated your employment is terminated, do not return to the job site, if you do that would be great but you will not get paid. King did not report to work on February 26.

G. The testimony of employees hired between February 17 to 20, working at the Shipp Avenue site

Ford testified he was a sprinkler fitter for 22 years, and a journeyman for four years. Ford was a member of the Union for four and a half years. Ford worked for Respondent from February 18 to 26. Ford testified he called Meyer on February 17. Ford asked Meyer if he had Ford's resume, Meyer replied he did and told Ford to show up at the Shipp Avenue job on February 18 for work. Ford testified the work he performed on the job was drilling holes through wood to put sprinkler pipes through. Ford credibly testified he was not disciplined while he worked for Respondent, and no one from management said anything to him about his performance. Ford was not a licensed sprinkler fitter in Ohio, at the time of his testimony. 19

Huff testified he has been a sprinkler fitter for seven years, and a journeyman for about a year. Huff worked for Respondent from February 20 to 26. Huff testified he gave Johnson a resume and Johnson faxed it to Meyer. Johnson told Huff he was hired on February 19, and he reported to work on February 20, at the Shipp Avenue project. Huff testified that, at that job, he hung plastic sprinkler pipe and he reported to John Allinder. Allinder told Huff he was glad to have help because they were behind. Huff testified he worked Friday, Saturday, Sunday, Monday, Tuesday, Wednesday, and Thursday. Huff testified the last time Allinder told him that he was doing a good job was on February 25. Huff testified the subject came up because Huff, referencing Meyer's phone call the night before, asked Allinder what happened yesterday in that Huff was fired and rehired in a minute. Huff credibly testified Allinder said he took care of it; you are doing a great job, and keep up the good work.

Waldo worked for Respondent from February 20 to February 26. Waldo testified Johnson called him on February 19, and told him there was a company that had a lot of work close to Waldo's home. Waldo emailed his resume to Johnson. Waldo met with Johnson, Huff, and Forsha at a restaurant on February 19. Johnson told Waldo to report Respondent to start work the next day. Johnson told Waldo Respondent had a lot of work at student housing projects all over, including New York and Virginia. On February 20, when Waldo arrived at the job site, he spoke to John Allinder, who put Waldo to work with Meuse hanging and gluing pipe.

¹⁹ Similarly, none of the seven employees who were discharged on February 25 or 26, were licensed in Ohio at the time of their testimony.

Waldo did not do any drilling. Waldo credibly testified he was not disciplined at the job. He testified, every day at the end of the day until the employees were fired, Allinder said they were doing a great job and asked if there was anything they needed to make things go faster. Waldo told Allinder about some tools they were not using that he thought would improve performance and productivity. Waldo credibly testified that, prior to being terminated, he was never told by Allinder or Meyer that Waldo's employment was temporary. Waldo testified Allinder told him there was plenty of work. Waldo testified he filed for and received unemployment benefits, although his application for benefits was contested.

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King worked for Respondent at the Shipp Avenue job. He testified he thought he started working in building 7, and the majority of work he performed was in building 1. He testified the work he did in building 7 included hanging pipe and finish work including installing sprinkler heads, nail plates, fire caulking, and the like. King testified he also drilled holes while working for Respondent. King credibly testified that, up until the point he was terminated, he was not disciplined in any way on the job. He credibly testified that on February 24, Allinder told him he was doing a good job and to keep up the good work. King testified Meyer, Allinder, and Meuse told him about a second phase of the Louisville project. Meyer told him about it on February 16 the day he hired King. Meyer said there was another big phase that was going in at the Louisville site, as well as a new job starting in Virginia. King credibly testified Meyer asked King if he would travel to the Virginia job, which King thought was at Virginia Tech. King said he would be willing to travel. Meuse, McKim, Ford, King and Huff credibly testified they never vandalized any of the pipes while working for Respondent. King credibly testified he never observed any Local 669 member vandalizing pipe at Respondent, and he was not aware that anyone vandalized pipe on the project.

H. February 26

Meuse testified that on February 26, he showed up at 7 a.m. ready to work. Around 7:30 a.m., John Allinder pulled up in a truck and he was upset. Allinder jumped out of the truck and Meuse, McKim, Huff, Forsha, Ford, and Waldo were standing in front of building 1. Allinder said he was not going to hand out the tools because they put union stickers on them. Allinder jumped back into the truck and went to the warehouse. Meuse testified Allinder told the men Meyer was coming, and they were to wait until Meyer arrived.²⁰ Waldo testified Allinder pulled up and he was furious about someone putting union stickers on the ladders and on the power tools. Waldo testified that he saw about 10 company tools with stickers on them, and about three ladders with stickers. He testified that, after Allinder drove away, they just stood in the breezeway and waited. Waldo testified they called Johnson who told them to just wait there. McKim testified Allinder pulled up and said somebody put union stickers all over the tools and they could not use the tools that day. McKim testified the union stickers were circular with about a four inch circumference. McKim testified the stickers did not prevent the use of the tools. Ford testified when Allinder arrived he was upset about union stickers being put on the tools. Ford testified Allinder said this is what it comes to with you all putting union stickers on our tools. Ford testified no one responded after Allinder said it twice. Then Allinder said he was not going to get the tools out for them to use that day, and he left.²¹

Allinder testified that, on the morning of February 26, he had a discussion with the above named employees about putting stickers on company equipment. He testified he told them putting stickers no matter what kind of stickers is unacceptable on company tools. Allinder

²⁰ Meuse testified Williamson and Foody were with Allinder, but they stayed in the truck.

²¹ Waldo testified he and Huff had placed the union stickers on the tools.

testified he was not aware of stickers on the tools until he did the inventory on the tools at around 4:30 or 5 p.m. on February 25, when he locked tools up in the game box. Allinder testified he was not concerned about what the stickers said. Rather, they were company power tools and they did not need stickers on them because the stickers could cause a distraction and therefore were a safety hazard. Allinder only belatedly testified the discussion with the employees on the morning of February 26, was about union stickers. Allinder testified he was angry because he was responsible for ensuring that Respondent's tools were kept in proper order. Allinder testified he tried to take the union stickers off the tools but some of them could not be removed. Allinder testified there were factory stickers that came on the tools for safety reasons. Allinder testified the factory stickers were not as large as the union stickers. Allinder estimated that the union stickers were about 6" x 4" to 6" x 6".

Meyer initially testified that on February 26, Allinder told him that union stickers were put on equipment. Meyer testified he was not concerned about this conduct. Meyer testified he thought Allinder told him this before Meyer informed the employees they were fired. While Meyer testified the union stickers were not an issue to him, he testified he had an issue with any stickers being placed on the tools as they are power tools and it might represent a safety problem. Meyer testified he asked Allinder to ask the employees to stop putting stickers on Respondent's tools. When asked why he gave Allinder that instruction when he had made up his mind to fire the employees, Meyer replied good question. Meyer then testified the stickers had appeared on the tools throughout the men's employment with Respondent. He testified it started on day one. When asked when he gave Allinder the instruction to tell the men not to do it, Meyer testified he did not recall, but that it was sometime between February 17 and 26. Meyer testified he did not discuss the stickers on the tools with the men on February 26, because it was not an issue. Meyer testified the issue causing the men's termination was that Respondent had a schedule and these men did everything they could to prevent Respondent from reaching its goals.

There is an obvious disconnect between Meyer and Allinder's testimony concerning the union stickers, with Allinder, whose job it was to keep track of the tools, stating he only first discovered the union stickers on the tools on the evening of February 25, and Meyer, who received reports about the goings on at the jobsite from Allinder, stating the stickers appeared on the tools from the first day of the men's employment, which began on February 17. Allinder admitted he was upset about stickers appearing on the tools, but attempted to down play the fact that they were union stickers. Similarly, Meyer testified the fact that stickers were union stickers was not an issue to him. Given their demeanor, the inconsistency in their stories, and their actual remarks to the employees on February 26, I find the fact that the stickers were union stickers troubled both Meyer and Allinder more than they were willing to admit.

Meuse testified that, following Allinder's comments about the union stickers on the tools, Meuse and McKim went to the warehouse and met with Allinder, Foody, and Williamson. Meuse testified they exchanged tools with Allinder because Meuse had some of Respondent's tools and Allinder had some of the McKim's tools. Meuse testified Allinder apologized for blowing up at them and stated he was not yelling at Meuse and McKim. Meuse testified Allinder stated he knew they would not have put stickers on anything of Respondent's. Meuse testified Allinder stated whatever happened next when Meyer got there was out of Allinder's hands. Meuse testified Allinder said they were going to be laid off, and he could not do anything about it. Meuse testified the conversation with Allinder took place around 8 a.m. McKim testified that, while they were at the warehouse, Allinder stated he knew Meuse and McKim did not put any stickers on the tools. McKim testified he did not recall anything else being said. McKim testified there was no time at the warehouse that he and Meuse were not together. He testified they were there about five minutes. Meuse testified after the conversation, he and McKim drove

back to where the other employees were waiting for Meyer, which was in front of building 1.

Allinder testified he recalled Meuse turning in his key on the 26th at the warehouse before the employees were fired, but he did not recall any conversation with Meuse. Allinder denied telling Meuse that he was sorry this was coming and there was nothing they could do about it. Allinder testified he was not aware Meuse was going to be fired that day as he was not involved hiring and firing.

I credit Meuse and Mckim's testimony they had a discussion at the warehouse in which Allinder told them he knew they did not place any stickers on the tools. Meuse's testimony was corroborated by that of McKim, who I found to be a credible witness. Moreover, the credited evidence reveals that Allinder had talked to Meyer before Allinder reported to the site that morning. In this regard, the credited testimony reveals he asked all of the employees to wait there until Meyer arrived. Thus, I find it likely Meyer had discussed his plans to terminate the employees with Allinder that morning. On the other hand, McKim did not corroborate Meuse's claim that Allinder informed them that whatever happened next when Meyer got there was out of Allinder's hands, that they were going to be laid off, and he could not do anything about it. McKim testified they were there a short time, and there was no time there that he and Meuse were not together. It seems, in the circumstances here, if Allinder had actually made a prediction of pending layoff to Meuse and McKim that in all likelihood McKim would have remembered such a remark going to the heart of his employment relationship. Given McKim's failure to do so, as well as Meuse's demonstrated penchant to ad lib concerning certain aspects of his testimony, I do not credit his claim that Allinder predicted Meuse and McKim's layoff, or that he stated what happened next was out of his control during this conversation. Accordingly, amended complaint allegation 5(c) is dismissed.

Meuse and McKim testified that, following their encounter with Allinder at the warehouse, they returned to building 1 where Waldo, Forsha, Ford and Huff were located. Meuse testified Meyer drove up and asked who was with Local 669. He testified all of the employees, including him, raised their hands. Meuse testified Meyer told them he was going to lay them off. McKim, Huff, Ford, and Waldo also testified about Meyer's conversation with the employees that morning. They confirmed that Meyer asked who was with Local 669, that the Local 669 members who were present raised their hands and were terminated. The employees' testimony reveals Meyer arrived at the site at around 9 a.m., at which time the conversation took place. Waldo testified he made a recording of Meyer's remarks to the men.²² Selected portions of the transcript of the recording are set forth below:

Mever: Who is with 669?

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Unknown 1/Ben Waldo: All of us

Meyer: Okay, guys, I had indicated this to you that this was a... this was a temporary arrangement. Okay? I'm asking you to leave the site. I will pay you. I'll process the payroll immediately. Do these guys have the pay roll sheets for what they've done this week? Are they filled out?

Unknown: Why are we being, uh, laid off?

Meyer: There's some performance related issues. And, as Indicated to Todd Johnson, I think you guys know Todd, this was a temporary arrangement. I asked him for one week worth of labor and he essentially has kind of forced the issue, keeps bringing people out

²² The parties stipulated that Meuse, McKim, Ford, Forsha, Huff, and Waldo were present at the time Meyer terminated the employees on February 26.

here. You can call me, I'll talk to you. But again we're going to evaluate some of the performance. I understand that some of our tools have been tampered with.

Unknown1/Ben Waldo: Not at all...

Meyer: Not at all?

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Unknown1/Ben Waldo: ...they're working good.

Meyer: Okay, I won't see stickers and things on our tools?

Unknown:----

Meyer: Okay, well, I might, I'll take a look at that, I'll evaluate that later. I'm just getting here wrapping my arms around it. Let's get the..... uh, get all of the paperwork filled out correctly and then I'm going to ask you to leave.

Unknown: So we're not getting laid off because we're union?

Meyer: Absolutely not. Uh, I've had some good relationships with some unions in the past. This just isn't an arrangement that's working. It was temporary all along. It kind of is what it is.

15 Unknown: (Talking in the background)

Meyer: I appreciate your help. Sorry it had ...sorry it has to be like this.

* * *

Meyer: Yea, what- what..................what-what I'm asking for right now is Sunday through yesterday. If there are issues, uh, I have legal counsel. Your business agent is gonna deal directly with them. Uh, I guess we'll see you at the National Labor Board meeting...if it gets that far. Uh, I don't know. Um, if anyone wants to contact me personally please work through John. He's more than happy to talk to you if you have questions or concerns. I can assure ya you'll get paid. Today we are gonna evaluate the performance- what's happened over the course of the past, you know, week, if you've been with us a week. Or two weeks, if you've been with us two weeks. We're gonna look at the tools, you know just evaluate things.

Unknown: What are we putting down for today?

Unknown 1/Ben Waldo: The tools are working fine...

Meyer: Uh a zero.....I think you got here and Johnny asked you guys to leave.

30 Unknown1/Ben Waldo: ...We were here on time.

Meyer: Alright, if you put down an hour I'll pay you an hour...

Unknown 1/Ben Waldo: ...but it's like almost...

Meyer: ...assuming I don't have labor costs wrapped up in, you know...

Unknown 1/Ben Waldo:but it's almost 9 o'clock...

35 Meyer: removing expensive tools.

* * *

Meyer:....l'll call you. Johnny has your contact information. I'll contact your business agent. I'll get you paid right away. I know you guys worked, you've been here...uh, we're a little disappointed in the performance and the things that happened...

40 Unknown 1/Ben Waldo: The performance seemed fine a couple of days ago...

Meyer: Well...

Unknown 1/Ben Waldo: ...I mean, John told us we were doing good, plugging along. Meyer: ...there are some discrepancies with that so, again, that's something we will take care of in house, okay? You are welcome to contact me if you have questions.

Unknown 1/Ben Waldo: Oh, we will....Yea, I mean, I don't know, I'm used to making \$60 an hour on Sunday anyway. You know, on a scale of about thirty two so... you know... So we weren't laid off union activities?

Meyer: Absolutely not. I made that perfectly clear all along...

Unknown 1/Ben Waldo: I mean...

Meyer: Its performance related. I indicated to your business...here's...here's what you need to ask.

Unknown 1/BW: ...you said we were doing fine...

Meyer: You need to ask your business agent what his agreement with me was. We didn't have one. I needed temporary labor and he provided it. You guys came out and did your job. You're gonna to get paid. Don't need you any more. I'm bringing my own labor crews in, okay?

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Meuse testified Meyer called him 11:30 a.m. on February 26, and Johnson taped the call which Meuse broadcast on his speakerphone.²³ Meuse testified he and Johnson, along with some of the other terminated employees, were having breakfast in a hotel near Louisville when Meuse received the call.²⁴ The transcript of the phone call reads as follows:

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Meyer: Hey Larry.

Meuse: Hey Bud. Did you call?

Meyer: I did call. I don't think that you are responsible for any of that activity and quite frankly, this has more to do with my budget on the project and things like that. And, you know, what was happening out there is those guys just weren't getting that work done fast enough to justify what we're paying them. That's the bottom line. And, I'm not opposed to bringing you back at some point. I need to work through some of those issues. Is that something you're interested in?

Meuse: Yes, sir.

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Meyer: Okay, there's going to be a labor dispute and all that. I'm prepared for (CALL BEEPING IN/SILENCE) have legal counsel but we're all going to deal with that. Um. But I want to talk to you___yesterday, I have another call comin' in, I will call you back. We'll talk, okay?

Meuse: Alright, buddy. Josh, too, probably?

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Meyer: I think you're...what's that?

Meuse: Josh too?

Meyer: I'll talk to Josh, uh, I don't know if that's gonna to be feasible right now. There's some legal considerations with bringing too many of you back right now. We'll-talk about that, okay?

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Meuse: Alright buddy.

Meyer: Hang tight, I will call you back.

Meuse: All right. Meyer: Thanks. Meuse: Mmm. bve. ²⁵

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²³ In actuality, the recording reveals Johnson made a tape of Meuse returning Meyer's call.

²⁴ Respondent argued at the hearing, that Johnson's recording of Meuse and Meyer's conversation should not have been received in evidence. I received the recording and transcript into evidence, giving Respondent leave to renew its argument in its post-hearing brief. Respondent elected not to do so. The Board has repeatedly held, in circumstances similar to those here, that surreptitiously recorded conversations and the transcript thereof are admissible if they are properly identified and authenticated. See, *Arrow Flint Elec. Co., Inc.* 321 NLRB 1208, 1219 (1996); *Nanticoke Homes*, 261 NLRB 736 (1982), enfd. 716 F.2d 897 (4th Cir. 1983); and *East Belden Corp.*, 239 NLRB 776 (1978), enfd. 634 F.2d 635 (9th Cir. 1980). Johnson, although not a party to the conversation, was clearly authorized by Meuse to make the recording, and I have concluded the recording and transcript were correctly received into evidence. See, *Plasterers Local 90 (S. Ill. Builders*), 236 NLRB 329 (1978), enfd. 606 F.2d 189 (7th Cir. 1979).

²⁵ Meuse initially that, during the above referenced call, Meyer told Meuse that he was going to try to work something out with Meuse to come back to work if Meuse would just deal with Meyer and leave the Union out of it. Meuse testified he told Meyer that he would go back to Continued

Meuse credibly testified Meyer never offered him a job following the call.

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Meyer admitted calling Meuse after he fired him and explaining to Meuse that he would consider offering him his job back. Meyer testified he could not recall the specifics of the conversation. However, he testified he told Meuse that he did not think Meuse was responsible for vandalism, which Meyer asserted was the reason for the termination of the employees. Meyer testified he was relatively certain, at that time, that one of the individuals the Union provided Respondent committed the vandalism. Meyer testified he reached this conclusion because Respondent did not have any vandalism issues before those individuals were hired or after they left. Meyer testified as follows concerning Meuse:

> JUDGE FINE: Sir, if you didn't think he was involved in the vandalism, why did vou fire him, in the first place?

THE WITNESS: That's a good question.

JUDGE FINE: Thank you. What's the answer?

THE WITNESS: There isn't an answer, I think that's one of the reasons I called

him and entertained the idea of rehiring him.

JUDGE FINE: What about Mr. McKim, did you think he was involved in the vandalism?

THE WITNESS: I wasn't sure.

JUDGE FINE: Did you offer him his job back?

THE WITNESS: I -- I -- I don't know. I don't think so, but I'm not sure.

Meuse credibly testified that neither Meyer nor Allinder ever told him he had performance problems before he was terminated on February 26. Meuse credibly testified Allinder complimented his work and Meyer told him he was doing a good job when Meuse called him and asked for a pay raise. Meuse testified that, during one of the conversations in which Meuse was asking for a pay raise, Meyer told him he would be working on the second phase of the project whenever that started. Meuse testified he filed for and received unemployment after his termination from Respondent. Meuse testified Meyer opposed his getting unemployment

work for Meyer if he wanted Meuse to, but he could not go back to work without Johnson knowing and Meuse would not work non-union. Meuse testified Meyer said he had some things to figure out that he would get back to Meuse. However, Meuse later testified the above transcript reflects the entire phone conversation. Meuse then testified Meyer said they could work out a deal "on the Union" for Meuse to return to work. Meuse testified this remark was not made during the above described phone call, and Meuse could not remember when Mever said it. He then testified he thought Allinder said it, not Meyer, and it was said right before the employees were terminated. Meuse testified Allinder said to him on the morning of February 26 perhaps Meuse could go behind the Union's back. Meuse testified no one else was present for this conversation. Meuse testified this was after he had the conversation with Allinder at the warehouse. Meuse testified that he did not reply to Allinder when Allinder made that statement. I have found the transcript, as set forth above, to be an accurate statement of Meyer's phone conversation with Meuse. I do not credit Meuse' embellishments beyond the transcript as to the remarks he attributed to Meyer or Allinder in this footnote. Meuse' testimony here was hazy, and had a quality of his creating it as he was going along, upon realizing his initial testimony was not substantiated by the transcript of the phone call. John Allinder denied telling Meuse that, after the February's 26 termination, Respondent would rehire him, or having a discussion with him about his union status. He denied talking to Meuse about going behind the back of the Union. I credit Allinder's denials here.

claiming he was responsible for vandalism. Meuse indentified a letter from the state of Kentucky allowing his claim for unemployment benefits. The letter, dated April 8, states Respondent did not provide proof that Meuse vandalized anything. McKim testified he filed for and received unemployment compensation. He identified a letter from the state of Kentucky, dated April 3, stating he was allowed unemployment benefits stating Respondent had failed to provide evidence of any misconduct regarding damage of company property.

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I. The Union's post February 26, picket lines

Johnson testified the Union established a picket line at the Shipp Avenue job on February 27 and 28. King testified he picketed at the job site on February 27 and 28 and he observed three employees working on February 27 for Respondent, and nine employees working on February 28. Ford testified he was at the picket line on February 27 and 28. Ford testified Respondent had seven employees continuing to work while Ford was picketing. Johnson testified the Union established another picket line at the Shipp Avenue job site on March 15, 16, and 17. Johnson testified he was on the picket line for two or three days. He testified that he saw 10 employees working for Respondent on those dates.

J. The testimony of Respondent's witnesses

1. Respondent's explanation for the February 26, discharge

Meyer is the sole owner and president of Respondent, which has been in business since August of 2008. Meyer testified in February 2009 Respondent was working on two jobs Shipp Avenue and WSU student housing projects.²⁶ Respondent was working for Edwards Community Construction (Edwards) the general contractor on both projects. Prior to starting Respondent's operations, Meyer was vice-president of a company called Fireguard for six years. Prior to Meyer's leaving Fireguard, Edwards had provided work to that company.

Meyer testified when he met with the three union officials on February 5, Respondent did not need additional manpower. Meyer testified that, during the meeting, the union officials told him they were going to send him resumes, and Franklin and Johnson sent him resumes between February 5 and 20. Meyer testified he had three or four phone calls with Franklin as well as calls with Johnson. Meyer testified Franklin offered people for Louisville and WSU, but Respondent did not need anyone. Meyer testified Johnson offered labor as well.

Meyer testified Respondent did not have any need for additional personnel until around February 14, when Meyer thought John Allinder let Meyer know Allinder's son had to be hospitalized, and Allinder had to leave the Shipp Avenue site. Meyer testified he thought he was in contact with Johnson some time within the next two days for additional personnel. Meyer testified that, at that point, he had more correspondence with Johnson about ramping up some temporary laborers to finish building 1 at Shipp Avenue, which had fallen behind due to Allinder's absence. Meyer testified Johnson recommended workers for Shipp Avenue, who

²⁶ The WSU jobsite is located in Ohio. Meyer testified it is his understanding that a state license is required to perform sprinkler fitter work in Ohio. Meyer testified James Allinder was the supervisor at the WSU job site, and he performed sprinkler work at the site. Meyer testified Allinder had a Ohio license as far as Meyer knew, as did Respondent's employee Kevin Coffey. Meyer testified everyone performing fitter work on Respondent's Ohio jobs had a state license to do the work. Yet, Meyer admitted he does not always verify people are licensed sprinkler fitters before he hires them.

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Meyer understood to be union members. Meyer testified sometime in mid-February he indicated to Johnson that Respondent would use the workers on a trial basis. Meyer did not recall the date, but he testified it was before the February 20 meeting. Meyer testified he did not talk about the length of time the workers would be there, but he told Johnson Respondent needed some temporary help. Meyer testified he relied on Johnson's recommendation to hire King, Ford, Huff, Forsha, and Waldo and he had no discussions with them about the duration of their employment. Meyer testified he told Meuse and McKim that as long as Respondent had work in Kentucky they would be allowed to work for Respondent there. Meyer testified he never had a conversation with any of the seven discharged employees about working at some other job site for Respondent. Meyer testified he made Respondent's hiring decisions based on the comfort level of Respondent's site superintendents.

Meyer testified King was terminated around February 24. Meyer testified John Allinder had expressed concern about King's ability to perform the work necessary on the site. Meyer testified he left King a voicemail and asked King to call him, but Meyer never heard back from him. Meyer testified he waited a couple of hours and then called King back and indicated Respondent would not need his services the next day. Meyer testified he probably referred to under performance during the voice messages.

Meyer testified Waldo, Forsha, Huff, Ford, Meuse, and McKim were terminated on February 26 because of vandalism on site. Meyer testified John Allinder became aware of it and he had serious concerns about the quality of the work and the morale on the project. Meyer testified they decided it would be best to terminate Respondent's relationship with them. Meyer testified he either took the pictures included in Resp. Exh. E, or was present when they were taken. He testified they were taken at building 1 at the Shipp Avenue project as examples of vandalism. Meyer testified the pictures were just examples, and the episodes repeated themselves up to 50 times in the building. Meyer testified it was a long slow process to determine where the acts of vandalism occurred and to fix them.

Meyer testified that, prior to February 26, John Allinder expressed concern on a daily basis about productivity and the lack of knowledge of installing the pipe correctly as per FPA code relating to the Union referred employees. Meyer testified that on Monday, February 23 there were suspicious things going on at the site. Meyer testified he talked to Allinder and asked that he monitor things. Meyer testified Allinder noticed some pipe had been cut late during the day on February 24 and again on the 25, as well as some other scenarios Allinder was uncomfortable with.²⁷ Meyer testified vandalism became a significant concern to him at the Shipp Avenue project on February 25. Meyer testified he indicated he would be down to the site on the morning of February 26 to terminate the employees. Meyer testified he had last visited the site on February 20. Meyer testified between February 20 to 26, work performance or vandalism concerning building 1 was a hot topic between himself and Allinder. Meyer testified they spent a lot of time talking about it. Meyer testified he wanted to give the employees an opportunity to prove they were capable of doing the work without being disruptive and harmful. Meyer testified his terminating the employees on February 26, had nothing to do with their union involvement. He testified it was a decision based on performance and Respondent feeling violated by all the acts of vandalism. Meyer testified that, after February 26, there were no other acts of vandalism on the Shipp Avenue project.

²⁷ Meyer later testified between February 20 and 26, he was aware through Allinder that there were some vandalism issues on the Louisville job.

While Meyer testified there was no vandalism at Shipp Avenue after February 26, he also testified that much of the vandalism was not uncovered until after February 26 when Respondent hydrostatically tested building 1 to see if the sprinkler pipe worked. Meyer testified that for the next 10 days every time they pumped up the pipe at a different level of the building they found another cut in the pipe or another nail driven into some obscure place. He testified they were roofing nails that were driven into the pipe indicating it was done deliberately. Meyer testified it takes time to determine where these things occur because they test the building on a floor by floor basis. Meyer testified it took weeks to repair the damage, and they discovered the majority of the damage after the employees were terminated on February 26. Meyer testified John Allinder made him aware of some of it before the termination.

Meyer testified the Local 669 members were terminated for poor workmanship at the Shipp Avenue site, including some of the concerns John Allinder had expressed to him concerning improper installation, as well as serious vandalism issues in building 1. Meyer testified performance related issues included deviating from blueprints, and not having spaced the pipe hangers correctly. He testified he has not discharged any of Respondent's other employees for those issues, although he has had some issues with Travis Redman and Travis Osborne pertaining to those things. Meyer testified they were contractors hoping to be hired on full time. Meyer testified he confronted them about the issue. Meyer testified they were allowed to go back to work after they were talked to, hoping there would be improvement. However, they guit several days after Meyer talked to them.

Meyer testified he hired Meuse and McKim on December 9, 2008, based on John Allinder's recommendation. Meyer testified they approached Allinder at the job site, handed him resumes and they appeared to be competent with the skills necessary to do the work. Meyer testified he had a brief discussion with them when he hired them. Meyer testified he asked them to do a good job and told them as long as they did a good job and Respondent had work in the Kentucky there would be work for them. Meyer testified Meuse and McKim called him sometime in January and told him they were in the Union. Meyer testified they were average workers, in that they were slow but responsive to Respondent's needs and Respondent worked with them and tried to train them.

John Allinder testified he is a foreman and has worked for Respondent since September 2008. Allinder testified Meyer does the hiring. Allinder testified he never made any promises to Meuse, McKim, King, Waldo, Forsha, Huff, or Ford as to whether they were going to be permanent or temporary employees. Allinder denied having discussions with the named employees about conversations Allinder had with Meyer.

Allinder testified he left the Shipp Avenue project when Allinder's son became ill, and Allinder he thought he was gone from February 14 to 19, 2009. Allinder testified he had discussions with Meyer about concerns Allinder had at the Shipp Avenue project during the week of February 20, 2009. Allinder testified they had numerous conversations and they talked several times a day. Allinder testified he did not discuss termination of the employees with Meyer because that was not Allinder's call. Rather, he told Meyer the employees were too much to manage and there was too much going on at the site. He testified there was vandalism, shoddy workmanship, and there was no way Allinder could watch all the employees. Allinder testified the conversations with Meyer started on February 20, when Allinder returned to the Shipp Avenue jobsite and continued on a daily basis.

Allinder testified that on February 20, the first thing he noticed and communicated to Meyer was the pipe was being hung unsupported and without hangers. He testified there were holes drilled where the pipe was supposed to be run, but they were not running the pipe through

the holes. Allinder testified in his conversations with Meyer, Allinder basically said the work was not being performed according to National Fire Protection Association (NFPA) standards or to Respondent's standards. Allinder testified he had several discussions with each of the seven employees at different times telling them about Respondent's schedule requirements and they were not meeting the schedule. He testified he talked to each of the employees on an individual basis. Allinder testified Waldo, Forsha, Huff, McKim, and Meuse hung pipe. He testified he discussed with them how pipe was supposed to be secured and hung properly according to code. Allinder testified he noticed a lot of pipe was being installed without proper support. Allinder testified the employees were together at the time of the discussion.

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Allinder testified Ford and King were doing the drilling at the site. He testified he approached them several times when they were supposed to be drilling, and the drill was sitting on the floor and they were standing smoking. Allinder testified there was not a lot of work getting done. Allinder testified he told them they needed to pick it up, that they have a schedule to meet. Allinder testified that, during the period of February 20-26, he had numerous conversations with Meyer about King and Ford. He testified he told Meyer they absolutely refuse to drill holes. Allinder told Meyer they were journeymen pipefitters and maybe they thought this work was beneath them.²⁸ Allinder testified they were expected to drill holes in building 9. Allinder testified he explained to King and Ford that as soon as the pipe installation was completed in building 1, the schedule was for pipe installation in building 9, which Respondent had to meet. Allinder testified he did not know the exact date he talked to the drilling crew, but he talked to them on numerous occasions about their poor performance. Allinder testified King said he could not drill due to a medical condition, so Allinder pulled him off the drilling. Allinder testified Williamson was also on the drilling crew. Allinder testified every time he went to talk to Williamson he was always working and he was a good worker.

When asked what other concerns Allinder had with shoddy workmanship in building 1, he testified on February 25, when he inventoried he saw the stickers on the tools. He testified he had done a brief walk-through of building 1, and he could see the pipe was not being tied down and run according to plans. He testified the vandalism he was referring to was the stickers on the tools. However, Allinder then testified he also saw some nails protruding out of the pipe in building 1. When asked how many nails Allinder testified, "I don't know, I think there was two or three obvious ones." Allinder testified they appeared to be roofing nails sticking out of the pipes. Allinder testified when a nail is stuck in the pipe and it is put under pressure for the sprinkler system there would be tremendous water damage. Allinder testified that was basically what he reported to Meyer prior to the morning of February 26. Allinder testified the following individuals were working in building 1 during this period: Meuse, McKim, Waldo, Forsha, Huff, and Allinder. Meuse, McKim, Waldo,

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Allinder testified he, along with Meyer, took pictures at the Shipp Avenue site on February 26. He testified the pictures were taken after the employees were terminated. Allinder testified the pictures were taken to show the improper way the pipe was hung and some of the vandalism. Allinder testified the pictures show the pipe not being hung with hangers, so a sprinkler head would flop around when it operated and it would fail to put out a fire. Allinder

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²⁸ Allinder testified Ford and King introduced themselves to him as journeymen, and stated they did not need much supervision. Allinder testified he did not see King's resume. He testified if they lied they lied concerning their alleged journeymen's status.

²⁹ Allinder testified that once they hydrostatically tested the building they found a lot more.

³⁰ Allinder testified Coffey, Williamson, King, and Ford were working in building 9 drilling. Allinder testified all the problems he found were in building 1.

testified pipe was also not glued into the fitting that it would just be laying there not tied in. Allinder testified if the sprinkler went off it would just blow the pipe out of the fitting. When asked if he knew who did this work, Allinder stated the union referred employees were all working in building one where he found the problems.

Allinder identified a series of pictures in Resp. Exh. E that he testified were taken by Meyer and himself during a walk through of building 1, a three floor building. Allinder testified the first picture in Exh. E shows pipe not properly supported in that the pipe was hung without hangers. Allinder testified the picture reflects the type of problem he had reported to Meyer since Allinder had returned to the jobsite on February 20. Allinder testified picture 2 in Exh. E shows someone snapped off a piece of pipe along with the test rig the Respondent uses to test the piping. Allinder testified that when he did a walk-through on February 25, the broken pipe was one of the things he noticed. Allinder testified picture 3 of Exh. E shows a cut in pipe and Respondent had to remove the floor joist to take the picture. He testified this was not visible until they hydrostatically tested the building on February 27 or 28. Allinder testified that when they hydrostatically tested the building there was water gushing out of it so they removed the floor joist and brought it down.

Allinder testified picture 4 in Exh. E was taken on February 26. He testified is shows a nail in Respondent's piping. Allinder testified picture 5 in Exh. E was taken on February 26, showing someone had cut through the pipe. Allinder testified he first observed the cut on the first floor when he walked through the building with Meyer on February 26. Allinder testified pictures 6 and 7 show nails driven in the piping. Allinder testified the nail in the pipe in picture 6 was discovered on February 25, and the picture was taken on February 26. Picture 8 shows a nail driven through the wood into the piping. Allinder testified he saw the nail at the time the picture was taken. Allinder testified pictures 9 and 10 show unsupported piping. He explained where the absent hangers should have been in the pictures. For picture 10, Allinder testified he discovered the scenario on February 25, and it repeated itself throughout the whole building.

Allinder testified he saw the items shown in pictures 1, 2, 4, 6, 7, 9, 10, and 11 before the employees were terminated. He testified he reported it to Meyer before they were terminated during a conversation on February 25. Allinder testified he saw the items shown in pictures 3, 5, and 8 after the employees were terminated. While Allinder testified he did not take any of the pictures before the employees were terminated, he testified he and Meyer had conversations about the issues in the pictures that he had seen before the termination and he reported it to Meyer between February 20 and the morning of February 26. Allinder testified the pictures did not show everything they discovered. He testified there were numerous incidents that repeated themselves throughout the whole building of pipes being unsupported. Allinder testified he noticed numerous instances when he first got back to the job on February 20, 21, and 22, and he reported them to Meyer. Allinder testified he did not actually see any of the named employees commit the acts depicted in the pictures. Rather, he concluded the acts were committed by them since they were the ones working in the area.

Allinder testified he started telling Meyer about the problems on February 20. Allinder did not recall what Meyer said in response. Allinder testified Meyer did not give Allinder any instructions on what to do about the problems that Allinder reported on the site. Allinder testified Meyer did not ask him to do anything about it. He testified he did not recall if Meyer came down to look at the site prior to February 26. Allinder did not recall when Meyer was last at the site prior to February 26, and he had no recollection of Meyer being at the site between February 20 and 26. Allinder testified he had his cell phone camera with him when he discovered the problems with the pipes on February 24 and 25. He could not explain why he waited until February 26, 27, and 28 to take the pictures. Allinder testified he did not recall running out of

materials on February 21 or 22. He testified it was not uncommon for them to run out of fittings. He testified they have a supplier 10 minutes away and can quickly replenish supplies. Allinder testified it is very unusual to come back to place hangers on pipe after it has been installed. Allinder testified you could not tell if the fitting was correct without it being hangered at the time it was installed.

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Counsel for the General Counsel submitted into evidence Respondent's counsel's position statement to the Region, dated March 19. As to the terminated employees, the position statement states Meuse and McKim were hired on the Louisville (Shipp Avenue) project, and they were told they would be employed on the project as long as there was work to do. It states Waldo, Forsha, and Huff:

were hired in mid-February, and were told at the time they were being hired on a temporary basis until the Company's present work crew and other subcontractors could get to that facility because they were finishing up work on another project. Those individuals were told that they would work either one or two weeks maximum until the work at the Louisville project was caught up.

Unfortunately, they began to perform their work incorrectly including not fitting pipes pursuant to plans, not appropriately sealing pipes, not hanging sprinkler heads correctly and generally performing their work in a shoddy fashion. After being warned, the individuals were let go for that improper work. In fact, given the status of the work on the project at the time, their shoddy workmanship only resulted in their being terminated two or three days earlier than their work would have otherwise ended.

The charge also refers to an alleged discriminatory discharge of Robert Ford and James King. Mr. Ford and Mr. King were hired the week of February 17, 2009 (the same as Mr. Waldo, Mr. Forsha and Mr. Huff) to work on a temporary basis until the Company's permanent workers could get to the Louisville, Kentucky job site. Those workers were told they would be on the job for one or two weeks maximum until the work was caught up. Again, those workers were terminated because of their poor work performance and not performing work up to Respondent's standards. Their affiliation with the union had nothing to do with their termination.

It is later stated in the position statement the seven employees, including Meuse and McKim were hired as temporary fill-in workers to complete certain work at Shipp Avenue and were not hired as permanent employees. It states Ford, King, Waldo, Forsha, and Huff were told they would work one or two weeks maximum until the work was caught up. It is stated, "Prior to the completion of that two week period, Respondent's foreman began to notice that the workers in question were performing work incorrectly. That is the reason why their employment with Respondent ended in late February, 2009." It is stated, "The seventh inquiry you made of me was the names and classifications of all new employees that replaced the discharged workers. There were no new employees hired as Respondent used its permanent employees to finish the work." It is stated, "The eleventh inquiry you made was what Matt Meyer, Respondent's owner, said to the workers who were terminated on February 26, 2009. On that date, Mr. Meyer told those employees that he could not tolerate vandalism or shoddy work and that their services were no longer needed because Respondent's permanent workers were now at the job site and were catching up with the sprinkler work that needed to be done."

2. Respondent's staffing at Shipp Avenue and its other locations

The parties stipulated, at the hearing, that the seven alleged discriminatees were not laid off on February 26, due to lack of work. Meyer testified Respondent's work was completed on

the Shipp Avenue project by May or June 2009. Meyer testified Respondent's work at WSU was finished in May 2009. Meyer testified the jobs at Shipp Avenue and WSU are the largest jobs Respondent has had in terms of sprinkler heads and the amount of pipe installed. Meyer testified that, after February 26, at any point in time he had between six and 10 sprinkler fitters working for him. Meyer testified that was for all jobs, including WSU and Shipp Avenue. Meyer testified there were six sprinkler fitters working for him at the time of his initial testimony; they were John Allinder, James Allinder, Kevin Coffey, Joe Pine, and Brian Dan. Meyer testified he classified Jordan Williamson as a laborer, who as part of his duties may have screwed in sprinkler heads. Meyer testified other laborers may have also performed this work. Meyer testified he considered gluing or running pipe through a threading machine to be laborer or sprinkler fitter work. He then testified laborers would not normally glue or thread pipe. He testified he did not know if they had done that work for Respondent.

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G.C. Exh. 40 is a summary of individuals who worked as employees, contractors, or temp agency Labor Ready personnel for Respondent. It shows the hire dates and employee numbers for some of the named personnel. The list shows:

20		Title Designer Superintendent Fitter nson Apprentice	10/27/08 10/29/08	Employment Number 1 3 2 7
25	Kevin Coffee Patrick King	Fitter Apprentice r Superintendent Fitter Apprentice	1/4/09 2/17/09	5 6 4 8 10
30	Robert Ford Rick Forsha Robert Huff Ben Waldo Ken Foody	Fitter Fitter contractor	2/18/09 2/20/09 2/20/09 2/20/09 2/25/09	13 12 11 14
35	Terry Lowe +2 Gary Morris Travis Redma Brian Cummin Raymond Hay	n	2/27/09 w	9 orking 26 days ending on 4/10
40	David Johnson Jeff Elmore Jerry Seibel Teddy Balley Bruce Warrick	Labor Ready Labor Ready Labor Ready Labor Ready	3/16/09 3/17/09 2/27/09, v 2/28/09 2/27/09	vorking 2/28, and 3/1/09
45	William Murrel Johny William Jeffery Mudd	Labor Ready	11/4/08 an 11/5/08	

³¹ G.C. Exh. 41 contains a summary of the dates worked by Labor Ready personnel for Respondent. The dates were extracted and added to the table set forth above. At tr. 1269, Respondent requested the admission of Resp. Exhs. A, B, C, D, and E. By oversight, I failed to rule on Respondent's request. Resp. Exh. E had previously been admitted, and there had been Continued

Meyer testified Respondent has used temporary workers and subcontractors since February 26, to meet Respondent's additional staffing requirements. Meyer testified the workers who finished the Shipp Avenue project after February 26, were a combination of John Allinder, Joe Pine, Jordan Williamson, Kevin Coffey, James Allinder, Ken Foody, and Terry Lowe. Meyer testified Lowe and Foody were contractors hired directly by Respondent, and were not referred by Labor Ready. Meyer testified Lowe and his crew were hired to replace the terminated Local 669 members. Meyer testified Coffey quit sometime in April or May. He also testified James and John Allinder, and Pine worked on other projects for Respondent after the Shipp Avenue project was completed, including projects called Rule 3 and Stygler Rehab. Meyer testified the workers who completed the WSU project after February 26 were primarily James Allinder, Pine, Coffey, as well as some laborer help.

Meyer testified John Allinder, James Allinder, and Joe Pine were laid off in mid-July; and Jordan Williamson was laid off by the first week of July. Meyer testified that as of August 11, Respondent had no work. Meyer testified he told Williamson, Pine, and James and John Allinder that if and when Respondent had a new project he would call them back. Meyer testified he did not expect any new projects in the near future, and he had no expectation that he would continue to receive work from Edwards.

Meyer testified the following Labor Ready referred employees worked at the Shipp Avenue project: Raymond Hayes, Jerry Seibel, Dewayne Shull, Jeff Elmore, Bruce Warrick, Ted Balley, and Dave Johnson. As set forth in the above table, Hayes first started there on February 27, worked there a good portion of March, with the last date being April 10. The others only worked there between one and three days as Labor Ready referrals, and that was shortly after the February 26 discharge of the union adherents. Unlike the other Labor Ready referrals, Seibel was soon taken on by Respondent directly as a contract worker, and he worked at Shipp Avenue for a significant amount of time in that capacity.

Meyer testified there was someone named Travis who worked for him at the WSU location. Meyer did not know his last name. Meyer testified he was a subcontractor who worked as a general laborer for at most two weeks and then was laid off. Meyer testified the largest crew Respondent had at the WSU site was four people, three of whom were journeyman. The crew was James Allinder, Coffey and Pine and a laborer. Meyer testified Respondent has not used any other temporary agencies other than Labor Ready. Meyer testified he only used Labor Ready personnel at WSU for about three days in 2008.

Meyer identified Resp. Exh. D as a list of Respondent's employees with their dates of hire. Referring to the exhibit, Meyer testified these were all the individuals who had worked for Respondent who were paid by Respondent through its payroll service Pay-Cor. Meyer testified the employee list in Resp. Exh. D was prepared in response to the investigation of the unfair labor practice charges. Meyer testified Foody and Lowe were subcontractors who were paid by Respondent with hard checks rather than through Pay-Cor. Meyer testified Lowe worked in January and in March at the Shipp Avenue job. Meyer testified Lowe, along with his crew, had a subcontract to do building 9 on the site. Meyer testified Christopher Kelson was an employee of Respondent who was hired around March 20, 2009. Meyer testified that Kelson might have

extensive use of Resp. Exhs. A and D on the record in questioning of witnesses. Resp. Exhs. B and C are regional office documents relating to unfair labor practice charges. In these circumstances, I am correcting this oversight and admitting into evidence Resp. Exh's. A, B, C, and D.

worked 10 days maximum. Meyer testified Gary Morris is general laborer at the WSU job who is employed by Respondent. Meyer identified Respondent's Pay-Cor payroll records from August 2008 to April 14, 2009. Meyer testified there only five employees he has ever characterized as temporary for Pay-Cor records. They were Huff, Forsha, Waldo, Ford and King. Meyer testified he told Pay-Cor to designate the five employees as temporary. Meuse and McKim were not designated as temporary on Pay-Cor records. However, Resp. Exh. D labels Meuse and McKim as temporary employees.

a. Respondent's use of contractor workers at Shipp Avenue

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Meyer issued direct checks to his employees for per diem, and he testified he issued direct checks to individuals who worked as sub contractors for Respondent, rather than as employees.³² Meyer identified G.C. Exh. 51 as checks written on Respondent's account covering the period of September 2008 to July 2009.³³

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Meyer identified checks to Foody, a journeyman sprinkler fitter, dated March 26, April 2, 7, 22, and 30, and he testified Footy was probably working at Shipp Avenue at the time. Meyer testified sometimes Foody provided directions to a crew and sometimes he performed hands on work. Meyer testified the people on the crew could have been Respondent's employees or Labor Ready temps. He did not think Foody brought his own crew to the job. Meyer testified Foody reported to John Allinder at Shipp Avenue.

Meyer testified Terry Lowe was a subcontractor at the Shipp Avenue site. Meyer identified a check to Lowe dated March 27, for \$3400 for sub work at Shipp Avenue. Meyer testified he did not know the time frame for the work performed for the check.³⁴ Meyer testified Lowe, a journeyman sprinkler fitter, had a crew working under him of between two and four sprinkler fitters and probably some laborers. Meyer identified a check to Lowe for the Shipp Avenue job dated April 3. Meyer testified that was probably for work done in March. Meyer identified a check for Lowe, dated May 1, for \$6000. Meyer identified another check dated June 4, made out to cash for \$3000, which he testified was for work performed by Lowe and his crew. Meyer identified a check dated June 23, for \$10,000 made to cash, which he testified was for a loan repayment to Meyer's brother, and for the final payment to Lowe and his crew for work at

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Meyer identified a check dated March 3, to Dwayne Shull, who Meyer testified is a general laborer, who performed work at the Shipp Avenue project. Meyer could not recall if Shull drilled holes, or if he carried pipe. Meyer testified he thought he only worked three days. Meyer testified Shull was a Labor Ready employee who contacted John Allinder and asked to be hired directly by Respondent. Meyer testified he worked a few days then Respondent never saw him again as Shull walked off the job. Meyer identified checks dated March 26, April 2, 7, 17, and 22 to Jerry Seibel. Meyer testified Seibel is a laborer who worked at the Shipp Avenue project performing subcontract work. Seibel drilled holes, carried pipe, and performed cleanup

Shipp Avenue. Meyer did not think Lowe and his crew worked anywhere but Shipp Avenue.

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³² Meyer issued a check dated February 4 to employee Jordan Williamson for his January per diem at the Shipp Avenue project. Meyer testified the per diem is \$20 per day.

³³ I have constructed a table showing the contents of most of the checks in G.C. Exh. 51, which can be found attached hereto as Appendix B.

³⁴ Meyer testified Lowe spent some time on the Shipp Avenue project in January, then he had another project and said he could no longer work there, but he returned to Shipp Avenue in March. Despite Meyer's claim Lowe worked at Shipp Avenue in January, the earliest check for Lowe produced by Respondent was the March 27, check.

work. Meyer testified Seibel had previously worked for Labor Ready and was fired for what Meyer recalled was drinking and driving. Meyer testified Labor Ready released him then Respondent hired him. Meyer identified a check dated April 22, to Raymond Hayes. Meyer testified Hayes, a laborer, had worked for Labor Ready and for whatever reason his relationship terminated with them. Hayes and Seibel reported to John Allinder. Meyer testified Hayes and Seibel were used exclusively at the Shipp Avenue project.

b. Respondent's other 2009 projects

Meyer identified a check dated April 17, to Brian Cummings who performed as a sub contract laborer and delivery person for Respondent at WSU. Meyer testified Cummings did deliveries, clean up, and possibly drilled some holes. Meyer testified he did not think Cummings ever worked at Shipp Avenue. Meyer testified Travis Gilliam is a laborer who worked briefly at the WSU job. Meyer identified checks dated, December 18 and 19, 2008, to Travis Redman, and to Travis Osborne, respectively. He testified they were working at WSU at the time. He testified both are sprinkler fitters, and both were former Fire Guard employees. Meyer testified both worked as subs, and never went on Respondent's payroll as employees.

Meyer testified Respondent worked on a job in Pickerington, Ohio, called Rule 3 from around mid-April to July, 2009. Meyer testified Respondent had between three and five sprinkler fitters on that job, and they were primarily journeymen. Meyer testified Cummings was the one laborer who worked on this project. Cummings performed delivery and cleanup work and things of that nature. Meyer identified checks for Cummings, dated June 10, 18, and 25, which he thought was for work Cummings performed at Rule 3. Meyer testified there were no holes drilled at Rule 3. Meyer testified Cummings periodically picked up supplies and made deliveries to WSU and the Rule 3 sites. Meyer testified Cummings also worked at those two sites doing general labor as Meyer was contractually obligated to clean up the sites on a daily basis. There are checks for Foody, dated May 13, 22, 28, and June 4, for work at Rule 3. Meyer testified both John and James Allinder also worked at Rule 3.

Meyer testified Respondent had another job called Stygler Road Rehab, which took place during the summer of 2009. Meyer estimated the job lasted around four weeks with most of the work being done in June. Meyer testified it is likely John Allinder began working on that job sometime in May. Meyer testified the individuals listed for working on the project were Joe Pine and John Allinder. Meyer did not know if anyone else worked on the project, stating there may have been days with up to three men there.

Meyer testified that, as reflected on G.C. Exh. 48, Respondent worked on a nail salon job located in Delaware, Ohio. Meyer testified sprinkler fitter Ken Coffey worked on the job. Meyer testified he did not know whether Dave Camp was also there. He testified Camp did some subcontract work for Respondent as a sprinkler fitter. Camp had previously worked for Fire Guard. Meyer testified checks for Dave Camp's work were made out to Amanda Camp. Meyer at one point testified he thought it was a two-day job, and thought the work was around January or February. Meyer did not know whether the work was completed before the Union referred employees were terminated. Meyer testified the February 6, check to Amanda Camp, in which it states sub labor, Ralph Williamson was for a remodel of a basement in an office building located in Powell, Ohio. Meyer testified it was a very small project and he did not know when that work was performed. Meyer testified he thought Dave Camp was there briefly and Kevin Coffey worked on that job. Meyer identified a check for \$1000 to Cash, dated March 18 with the notation sub labor Ralph Williamson. Meyer testified something happened involving cleanup over weekend on the job and Respondent volunteered to help. Meyer testified he paid

the men to help perform the clean up work. He testified John Allinder, Jordan Williamson, and Kevin Coffey did the clean up. Meyer testified he did not think these men did the sprinkler work on the job, as that was done by someone else.

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c. The testimony of Edwards Construction official Lawrence Depriest

Depriest is employed by Edwards Construction as a project manager. Depriest identified Edwards' "Daily Notes" as project records for WSU and Shipp Avenue. 35 Depriest testified Edwards uses summaries used to create the Daily Notes to monitor production activity to determine if schedules are falling behind, and to talk to the particular contractor about increasing their staff or having work done elsewhere. He testified information for the source documents are gathered each production day by Edwards superintendents on the job site.

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Edwards' Daily Notes for Shipp Avenue show on January 16, Respondent had four workers at the site, with comment by Edwards, "Trades that require additional staffing to meet production are Classic Fire Protection." From January 29 to 31, it is noted daily, "Classic Fire Protection continues to delay inspection." From February 3 to 14, it is noted daily, "Fire Suppression needs to staff up immediately." Those remarks are repeated for February 16 to 20. On these reports, Respondent went from 4 workers on February 16 at Shipp Avenue, to 10 workers on February 20, to 16 workers each day from February 21 to February 23. It shows Respondent had 10 workers each day from February 24 to 28, with 3 on Sunday, March 1. It shows Respondent had 9 workers each day March 10 to 13. From March 14 to April 9, Respondent had 6 workers each day, except one. On April 14 to 16, Respondent had 11 workers each day at Shipp Avenue. From March 10 to April 2, it stated in the Daily Notes each day either Respondent is showing signs of falling "way behind real fast" or Respondent "is falling way behind real fast." The reports show Respondent spent part of March 10 to 14, repairing building 1, and at least parts of March 31 to April 2, repairing building 2.

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K. Analysis

1. The February 25 and 26 discharge of the seven employees

In Galick's, Inc., 354 NLRB No. 39 (2009), the Board citing Wright Line, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982) stated:

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Under Wright Line, supra., the General Counsel must first show, by a preponderance of the evidence that protected conduct was a motivating factor in the employer's adverse action. Once the General Counsel makes that showing by demonstrating protected activity, employer knowledge of that activity, and animus against protected activity, the burden of persuasion shifts to the employer to show that it would have taken the same adverse action in the absence of the protect activity. If, however, the evidence establishes that the reasons given for the employer's action are pretextual -- that is, either false or not in fact relied upon-the employer fails by definition to show that it would have taken the same action for those reasons, and thus there is no need to perform the second part of the Wright Line analysis. Conduct violative of Section 8(a)(5) may evidence union animus. Unlawful motivation also may be inferred from circumstantial evidence, including timing and pretext. (Footnotes omitted.)

³⁵ The Daily notes provided did not contain information for Shipp Avenue for March 4 to 9. The WSU notes provided were missing a lot of dates.

There is no dispute that Respondent's laid-off journeymen engaged in union activity and that the Respondent knew as much. The journeymen signed union authorization cards, which the Union presented to Galigher when it requested voluntary recognition. The journeymen then voted in the election, and the vote was unanimous in favor of representation.

Contrary to the judge's decision, the evidence does show that the Respondent harbored union animus. When the Union sought voluntary recognition, Galigher responded that he was not interest in being union. A week later, when the Union petitioned for an election in a journeyman unit, Galigher laid off Cottis, his sole remaining journeyman. The timing of this layoff is striking. Although the judge did not expressly discredit Galigher's claim that the layoff was due to lack of work, he observed that Paternoster was hired soon after Cottis's layoff and has performed journeyman work. Also indicative of pretext, and evidencing animus, were Galigher's discredited efforts to suggest that his failure to recall journeymen after Cottis's layoff was owing to reduced work. (Footnote omitted.)

The evidence in the instant case reveals Union agent Johnson contacted Meuse in December 2008, and asked him to seek employment with Respondent. Meuse called Meyer on December 5, seeking employment, and during the call Meuse concealed his employment history with union contractors. Meyer asked Meuse if he had a helper, and as a result Meuse brought Mckim with him as an apprentice and they both began working for Respondent at the Shipp Avenue site on December 9. During the first two weeks, Meuse and McKim worked for Respondent in a contract status, and thereafter Respondent placed them on its payroll as employees. Meuse' testimony reveals that when he started, John Allinder, Williamson, Meuse and McKim were working for Respondent at the site. During their initial phone call, Meyer told Meuse that he was going to try and get Meuse work at Respondent's WSU site in Dayton, Ohio. However, Meuse told Meyer he did not have an Ohio license. While working for Respondent, Allinder asked Meuse if he would be willing to travel for Respondent to a Virginia site, and to Lexington, and Meuse agreed to do so. McKim's testimony reveals he was told by Allinder that Respondent was working at phase one of the Shipp Avenue project, and there was going to be a phase 2. Allinder asked McKim if he was willing to travel in that Respondent had a job in Ohio, and a job in Lexington, Kentucky coming up.

Meuse' credited testimony reveals that both Allinder and Meyer complimented Meuse' work, and Meuse was left in charge of the site during Christmas week, and again in February 2009, when Allinder had to leave to care for his son. Similarly, McKim credibly testified Allinder never expressed concerns about the quality of McKim's work. McKim testified Allinder did express a concern about the pace of the drilling on February 22 or 23, although McKim was not drilling at the time.

On January 22, union officials Johnson, Zimmer, and Franklin visited Respondent's WSU site, and spoke to foreman James Allinder, and Respondent's employees Pine and Coffey. During the visit, union business cards were distributed. Zimmer's credited testimony reveals that James Allinder told him Respondent was behind at the site, that there was a breakage causing loss of antifreeze, and that carpenters from another contractor shot nails into Respondent's pipe. Allinder also told Zimmer someone was cutting Respondent's pipe to make way for that contractor's installation.

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On January 29, Meuse and McKim told John Allinder they were union members.³⁶ McKim testified they told Allinder of their pro-union status as a result of instructions they received from Johnson to do so. Around that time, Franklin called Meyer and asked for a meeting to share the benefits of Respondent being involved with Local 669.

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Johnson, Franklin and Zimmer met with Meyer at a restaurant in Ohio close to the WSU jobsite on February 5. The credited testimony reveals that, during the meeting, they discussed wages, fringe benefits and Respondent's manpower needs. Meyer inquired about and was told the Union's wage and insurance rates on an hourly and weekly basis. Meyer told them he was falling behind at the Shipp Avenue project in Louisville, that he needed manpower, and he asked the union officials to send Meyer resumes. Meyer also stated he might need some additional workers at the WSU site. Franklin's credited testimony reveals, Meyer stated he had the possibility of additional work in Virginia and New York, and he asked the union officials to inquire for him about the licensing requirements of those states. Meyer testified he stated he needed some type of weekly agreement. Zimmer credibly testified Meyer explained he wanted to be able to evaluate the men on a weekly basis.

On February 6, Johnson contacted union apprentice King and notified him of the possibility of employment at the Shipp Avenue site. They visited the site that day, and talked with John Allinder giving Allinder King's resume. King's testimony reveals Allinder stated they needed help, that they were behind at the site, and Allinder would get King's resume to Meyer. On February 7, Johnson emailed Meyer a copy of King's resume. King's testimony reveals he called Meyer on February 9, and Meyer said Edwards, the general contractor, had a problem with union men working on the job. Meyer stated he thought it would be resolved that week, and King would probably go to work the following week.

Meyer called King on February 16. Meyer told King he was going to give him a job with a February 17 start date. The credited testimony reveals that, during the call, they discussed King's resume and Meyer said he had quite a bit of work if King was able to travel. Meyer stated there was a big job in Virginia starting that summer and he wanted to know if King would be willing to travel to Virginia to work. King stated he would. Meyer offered King \$16 an hour, and stated King's wages could be increased after he started working. Meyer mentioned several other jobs, the names of which King could not recall.

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On February 17, 2009, Johnson emailed Meyer stating he had faxed Robert Ford's resume, and he would also email a copy. The email stated Ford could start working on February 18. Ford's resume stated he was willing to travel. Johnson sent Meyer a follow up email on February 17, stating union member Robert Huff was ready to begin work the next day. The email stated Huff was willing to travel and had experience. On February 18, Johnson emailed Huff's resume to Meyer. Ford began working for Respondent on February 18, at Shipp Avenue.

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Franklin emailed Meyer on February 18, requesting a 30 to 40 minute meeting to explain how the Union could fit in Respondent's business plan and help Respondent become more "productive, profitable, and valuable." Johnson had a phone conversation with Meyer on February 19 where they discussed Respondent's additional manpower needs at the Shipp Avenue job. Johnson told Meyer that he would have three more union members come out on February 20, to report for work. Johnson asked Meyer about Johnson's faxing their resumes to Meyer and Meyer stated Johnson should fax them. Johnson credibly testified Meyer stated "if

³⁶ Meyer testified he was told Meuse and McKim were union members

those guys are as good as the ones you sent me so far, go ahead put them to work. I'll look at the resumes later. Just go ahead -- they can start tomorrow." Johnson testified Meyer stated he needed more manpower and then just the three individuals. Meyer stated he was going to be at the Louisville project the next day and he would meet with Johnson and they could discuss Meyer's additional manpower needs.

Following Johnson's call with Meyer, on February 19, Johnson and Zimmer met with John Allinder and Respondent employee Williamson at a restaurant in Louisville, Kentucky. During the meeting, Allinder stated Respondent was behind and needed manpower for the Shipp Avenue project. Johnson told Allinder the Union had three or more employees coming the next day. Allinder said he needed seven more employees. Allinder said the employees they had hired in the past week or so, who were members of the Union, were working out well and doing a good job. Johnson discussed Union wages and fringe benefits with Allinder. Allinder liked the Union's health insurance and stated he would like to become a member to obtain union benefits. Johnson gave Williamson a union sweatshirt and a T-shirt at Williamson's request. Johnson told Allinder they were going to meet with Meyer on February 20, in Louisville, Kentucky to discuss the possibility of an agreement between Respondent and the Union. Allinder stated he thought Meyer would be for it if it made good business sense. Johnson referred and Respondent hired union members Huff, Forsha, and Waldo on February 20 at the Shipp Avenue site.

Johnson and Zimmer met with Meyer on February 20 at a Holiday Inn in Louisville. Zimmer credibly testified to the following: During the meeting they were continuing what he would call negotiations for a contract. He testified the Union had supplied Respondent with men, and the Union felt it was time to get something down on paper because they had seven or 25 eight union men working for Respondent, but they did not have any kind of an agreement. Meyer stated he needed some \$10 an hour drillers, and he needed three more installers. The Union was told the installers could be journeyman or apprentices, but they had to be experienced at working with plastic pipes. The Union officials asked if Meyer was satisfied with the men they had sent him, and he said he was. They started talking about wages, and the 30 Union stated they were fairly flexible for the type of work Meyer was doing which was considered residential work. Meyer was told the Union had a lower rate for residential work than the one in the Union's Master agreement for industrial work. Meyer told the Union he could pay around \$18 to \$18.50 an hour for the men, and they told him they thought that was workable. Zimmer asked Meyer where he thought his employees at WSU and Williamson at the 35 Shipp Avenue project could be placed in the Union's apprenticeship program. Meyer became adamant that these employees did not want to be in the Union. Meyer stood up and said his people did not want the Union. Zimmer responded he disagreed because the Union had some support at WSU with Meyer's employees who were interested in joining. The Union officials told Meyer this is going to happen because they were having negotiating meetings right now. Meyer 40 became extremely agitated, and stated all he would ever do is look at a one-week agreement, and he stated he was not happy with the production of the hole drillers referred by the Union. Zimmer testified this all happened in 30 seconds, as soon as Zimmer mentioned placing Williamson in the apprenticeship program Meyer was out the door in that Meyer was packing up his papers and leaving. Zimmer testified Meyer's remark about the hole drillers production 45 came out of nowhere. Zimmer testified that prior to his raising the issue of Respondent's employees coming under the Union's contract, Meyer never said he was dissatisfied with any of the labor the Union had provided. Zimmer testified that at the beginning of the February 20

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meeting Meyer was happy with King, and Ford, and he said he wanted three more hole drillers so he could pull more experienced guys to hang pipe.³⁷

McKim's credited testimony reveals that: McKim called Meyer on Friday, evening February 20. During the conversation, McKim asked Meyer for a raise. Meyer told him the temporary workers from Local 669 were probably only going to be there another week or so. Meyer told McKim he needed McKim, Meuse, Allinder, and Williamson to keep the Shipp Avenue job going smoothly after the other men were terminated. McKim testified it was his understanding Meyer was referring to the five employees who had recently been referred by Local 669 as being temporary. McKim testified Meyer told him that he was doing good work and a raise would be coming in the future. McKim testified that, around Monday, February 23, Allinder told McKim that he did not think the drilling was getting done fast enough. McKim testified Ford, King, and Williamson were doing the drilling at the time.

On February 23, Johnson faxed in to Region 9 a petition for election for Respondent's employees. Johnson called Meyer around 10:30 a.m. central time on February 23, and notified Meyer of the petition. Johnson credibly testified Meyer responded he wished Johnson had not done that. Meyer also told Johnson that he did not want Respondent to be unionized. On February 23, Johnson emailed Meyer the resume of another employee. Meyer responded that night by email stating Respondent was not interested in the employee and several of the existing drillers were under performing and were going to be replaced by individuals with more experience who have been trained by Respondent and have the ability to keep up.

The credited testimony of Meuse and Huff reveals that during the afternoon of February 24 or 25, Meuse and Huff where in the breezeway of building 1. John Allinder came up the stairs all red-faced. Huff asked Allinder why his face was red and Allinder said his blood pressure was rising. Meuse testified Allinder said Meyer was mad at Allinder and Foody was coming down to take over the job because Allinder was not running it right. Meuse testified Allinder said Meyer was upset over something that Johnson had done. Meuse testified Allinder stated he did not know if they got rid of all of the employees how they were going to get the job done. Huff testified Allinder said he had high blood pressure because he was worried that either Meyer was going to fire them or Johnson was going to pull them out. Allinder said he did not know what he was going to do because the job was so far behind. Huff testified Allinder told Meuse that Meuse ruined his life.

Huff credibly testified Meyer called him at home on Tuesday evening, February 24 and told Huff he was fired for lack of production in drilling holes. Huff responded he had not drilled any holes, that he was hanging pipe. However, Meyer said he was going to have to let him go.

³⁷ Similarly, Johnson testified that, during the meeting, Meyer stated he had just bought ladders, tools and drills for his men on the Shipp Avenue project. Johnson testified they discussed wages and they talked about how good a job the men the Union had sent were doing, with Meyer stating that they were good workers. Meyer stated he needed more manpower, but he was looking for cheaper manpower. Johnson testified they discussed \$10 an hour for employees as a way for Johnson to get Meyer some less expensive men. Johnson testified that, during the February 20 meeting, Johnson asked Meyer how he wanted to place employees such as Williamson currently working for Respondent in an apprenticeship program under any agreement with the Union. Meyer responded his employees were not interested in a union. Johnson testified Meyer stated only the union members would be working under a week to week project agreement, and not employees working for Respondent who are not union members. Johnson testified once Meyer made that comment the meeting ended.

However, Meyer called back and told Huff he could return to work, but it was a very temporary thing. Meyer stated he mixed up the names.

Early in the morning on February 25, Meyer called Johnson and left him a voice mail. The transcript of the call reveals, Meyer told Johnson that his temporary laborers Kind and Ford were not needed that day. Meyer told Johnson he was having some of his own men come by the end of the week, and Respondent was "gradually phasing your temporary laborers out period." Meyer stated his "attorney and I will see you guys in court next week." Meyer told Johnson, "You have been nothing but dishonest and underhanded throughout the course of this entire process." In reference to King and Ford, Meyer stated, "they are not keeping up. Um, they are slow. All your guys are slow. This is not what you promised us." Meyer went on to state, "We'll see you in court. By the end of the day tomorrow we are not going to need any of your guys on site. I am sending multiple crews down there."

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Johnson credibly testified as follows: Johnson called Meyer back around 8 a.m. on February 25, and he spoke to Meyer. Meyer told Johnson that he was going to pay King and Ford for the rest of the day because Meyer was an honorable man, but that was their last day. Meyer told Johnson that all of his guys were slow, that they were underperforming and Meyer was going to phase them out by Thursday that week, that he was going to let them go. Johnson asked Meyer what happened because during their meeting on February 20, Meyer had told Johnson they were good employees and he wanted the Union to get him more, but now all of a sudden they are underperforming and slow. Meyer responded he had not had a chance to evaluate them because they had just started. Johnson testified at the end of the conversation Meyer stated, "I'm getting rid of all of them. I'm phasing all of them out, I'm getting rid of all of them." Meyer said he was bringing in multiple crews to replace them. Meyer told Johnson this was a temporary arrangement, and Johnson knew it was temporary. Johnson responded it was not temporary, that all these guys were doing a good job, and Meyer was going to send them to Virginia Tech and to New York. On February 25, Johnson went to the Shipp Avenue site and spoke to John Allinder. Johnson testified they talked about the upcoming election. Johnson testified that when he was at the site Meuse, McKim and Williamson were wearing Local 669 shirts in the presence of Allinder.

King credibly testified Meyer called and left a message on King's phone on the evening of February 25. Meyer told King not to return to the job site that King was terminated. Meyer stated King could return but he would not be paid. Meyer did not give any reason for terminating King. Meyer did not ask King to call him back to explain the reasons. King did not report to work on February 26.

On the morning of February 26, Meuse, McKim, Huff, Ford, Forsha, and Waldo were at the Shipp Avenue site standing in front of building 1 ready to start for work. Allinder drove up in his truck, and stated he was not going to hand out the tools because the employees placed union stickers on them. Allinder told the men Meyer was coming and to wait there until Meyer arrived. Waldo credibly testified Allinder was furious about someone putting union stickers on the tools and ladders. McKim described the union stickers and testified they did not prevent the use of the tools. Ford also described Allinder as being upset over someone placing union stickers on the tools. Shortly, thereafter Meuse and McKim met Allinder at the warehouse at the site to exchange personal and company tools. Allinder told them he knew they did not place any of the stickers on the tools. Thereafter, Meuse and McKim returned to building 1 and waited with the other employees.

Meyer arrived at the Shipp Avenue site around 9 a.m. on February 26, and had a discussion with Meuse, McKim, Ford, Forsha, Waldo, and Huff who were standing outside of

building 1. Waldo made a recording of Meyer's remarks to the men. The testimony of employees and the recording, reveal that Meyer asked the employees who was with Local 669, and all of the employees raised their hands. The recording reveals Meyer stated he indicated to the employees this was a temporary arrangement, and he was asking them to leave the site. When asked why they were being laid off, Meyer responded, "There's some performance related issues. And, as I indicated to Todd Johnson, I think you guys know Todd, this was a temporary arrangement. I asked him for one week worth of labor and he essentially has kind of forced the issue, keeps bringing people out here. You can call me, I'll talk to you. But again we're going to evaluate some of the performance. I understand that some of our tools have been tampered with." Waldo responded the tools had not been tampered with, and that they were working well. Meyer stated, "Okay, I won't see stickers and things on our tools?" Meyer in response to a question, denied the employees were being laid off because they were union. Meyer stated, "I appreciate your help. Sorry it had... sorry it has to be like this." Meyer went on to state. "I guess we'll see you at the National Labor Board meeting...if it gets that far." Meyer stated Respondent was going to evaluate performance, what had happened over the past week, or two weeks if they had been there that long, and they were going to look at the tools. They discussed pay for that day, and Meyer stated there might be labor costs to consider for removing stickers from expensive tools.

Meuse testimony reveals Meyer called him around 11:30 a.m. on February 26. Meuse 20 returned the call, and Johnson taped Meuse' conversation with Meyer which was broadcast on Meuse' speaker on his cell phone. The transcript of the call reveals Meyer told Meuse, "I don't think you are responsible for any of that activity and quite frankly, this has more to do with my budget on the project and things like that. And, you know, what was happening out there is those guys just weren't getting that work done fast enough to justify what we're paying them. 25 That's the bottom line. And, I'm not opposed to bringing you back at some point. I need to work though some of those issues. Is that something you're interested in?" Meuse responded he was interested in coming back. Meyer told Meuse there was going to be "a labor dispute and all that." Meyer stated he was prepared and had legal counsel. Meyer stated he would call Meuse back. Meuse asked if Meyer could also bring McKim back. McKim, an apprentice, worked as 30 Meuse' assistant. Meyer stated he would talk to McKim. However, Meyer also stated in reference to bringing McKim back that, "I don't know if that's gonna be feasible right now. There's some legal considerations with bringing too many of you back right now. We'll talk about that, okay?" Meyer did not call Meuse back, and did not offer him a position.

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In sum, Meuse and McKim were hired by Respondent in early December 2008, and received positive feedback by supervision concerning their performance. On January 29, they informed Allinder of their union status. Union officials Zimmer, Johnson, and Franklin met with Meyer on February 5. During the meeting, Meyer told the Union officials he was falling behind at Shipp Avenue, that he was going to need manpower, and he asked the union officials to send resumes. On February 9, union member King seeking work called Meyer. Meyer told him Edwards, the general contractor, had a problem with Respondent bringing union workers on the site, and that it would probably be resolved so that King could start work the following week. Meyer called King to start working on February 17, and Meyer told King that Meyer had a lot of work if King was willing to travel citing a job in Virginia that was to start that summer. Johnson emailed Meyer a copy of Ford's resume on February 17, and Ford began working for Respondent at Shipp Avenue on February 18. On February 18, Franklin emailed Meyer requesting a 30 to 40 minute meeting to discuss how the Union could fit into Respondent's business plan. On February 19, Johnson called Meyer, and they discussed the Union's referral of three more employees to Respondent. Meyer told Johnson if those three were as good as the three Johnson had already referred that Meyer would put them to work, and he would review their resumes later. In fact, Meyer did put Forsha, Waldo, and Huff to work on February 20.

Zimmer and Johnson met with Meyer on February 20, in Louisville. During the February 20 meeting, Meyer told the Union officials he needed some \$10 an hour drillers, and he needed three more pipe installers at the journeyman or apprentice level. Meyer was asked, and he told the union officials he was satisfied with the work of the men the Union had already referred. They discussed wage rates for the union referrals which were agreeable to the Union. However, when the union officials questioned Meyer as to how his non-union employees would fit under the union contract, Meyer became agitated and stated these employees did not want a union. When the union officials pressed Meyer stating they had been in contact with those employees and that they supported the Union, Meyer became upset stating he was only willing to look at a one week agreement, and for the first time stated he was not happy with the production of the hole drillers referred by the Union. The timing of Meyer's complaint during the same meeting in which he had previously stated he was satisfied with the work of the union referrals indicates Meyer's change in position was concocted and was in direct response to the Union's efforts to organize Respondent's employees and to obtain a contract for the remainder of Respondent's work force.

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McKim phoned Meyer on the evening of February 20, and was told the temporary referrals from Local 669 would only be there for another week or so, but Meyer was counting on Meuse, McKim, Allinder and Williamson to keep the site running smoothly after the recently hired Local 699 referrals were terminated. Johnson phoned Meyer on the morning of February 23, and he had informed Meyer he had filed a petition for election. Meyer responded that he wished Johnson had not done that, and that he did not want Respondent to be unionized. Johnson emailed Meyer a resume on February 23, and Meyer sent an email back stating he was not interested in the employee, that the drillers were underperforming, and they were going to be replaced by individuals with more experience who had been trained by Respondent. As set forth above, the timing of Meyer's change in attitude as to the performance and use of the Union's referrals suggests that it was brought about by the Union's informing Meyer on February 20, of its intent to organize his employees, as well as a direct response to the Union's filing of the petition for election on February 23. This is confirmed by the testimony of Huff and Meuse, which reveals that around 2 p.m. on February 25, Allinder told Meuse and Huff that Meyer was upset over something Johnson had done, and Allinder did not know if Meyer got rid of all the employees how they would get the job done. Allinder stated he was worried that Meyer was going to fire the employees or Johnson was going to pull them out. I have concluded Allinder's remarks were a direct result of Meyer's response to the Union's efforts to organize Respondent's employees, and Johnson's filing the petition for election on February 23.

On February 25, Huff and Waldo placed some union stickers on some of Respondent's power tools and ladders. Allinder discovered the stickers on his inspection of the tools at the end of the day on February 25. On the evening of February 25, Meyer left a voice mail message for King that he was terminated and not to return to the jobsite, and that if he did he would not get paid. On the morning of February 26, Allinder came to the jobsite at the start of the day. Allinder was very angry and he told Meuse, McKim, Huff, Ford, Waldo, and Forsha that he was not handing out the tools that day because someone had placed union stickers on them. Allinder told them to wait there for Meyer to arrive. Shortly, thereafter, Allinder met Meuse and McKim at the warehouse and he told them he knew they did not place any stickers on the tools. Meyer showed up at the site around 9 a.m. on February 26. Meyer asked which employees were with Local 669, and the six employees named above raised their hands. Meyer told the employees it was a temporary arrangement, and he asked them to leave the site. When asked for the reason for the lay off, Meyer stated there were some performance related issues, and he stated that, as he told Johnson, it was a temporary arrangement. Meyer stated he asked Johnson for one week's worth of labor, and Johnson kind of forced the issue in that he kept

bringing people out there. Meyer stated he understood some of Respondent's tools were tampered with, specifically citing the stickers on the tools. Meyer stated he appreciated the employees help, and he guessed he would see them at the NLRB meeting.

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Thus, despite prior assurances to McKim on February 20, that Meuse and McKim were not viewed as temporary, and statements by Allinder that he did not believe they placed stickers on the tools, they were terminated along with the other union referrals simply because they indentified themselves to Meyer as being with Local 699 on February 26, when Meyer asked for a show of hands as to who was with the Union. This conclusion is supported by Meyer's phone call to Meuse later on during the morning of February 26, wherein Meyer stated to Meuse that Meyer did not think Meuse was responsible for any of the activity, told Meuse he was not opposed to bringing Meuse back, but that he needed "to work through some of those issues." Meyer referenced the fact that there was going to be a labor dispute. When Meuse asked Meyer about bringing McKim back, Meyer responded, "I don't know if that's gonna be feasible right now. There's some legal considerations with bringing too many of you back right now." Thus, Meyer did not cite any performance related issues concerning McKim as a reason for not recalling him. Rather, Meyer was troubled by the possibility of bringing back too many union adherents at one time during the course of his labor dispute with the Union. In fact, when Meyer was asked why he terminated Meuse, all Meyer could state was that was a good guestion, for which he admittedly had no response. Accordingly, I find there is evidence of timing, knowledge, and strong evidence of animus demonstrating the seven employees named in the complaint were terminated for their union activities shifting the burden to Respondent demonstrate their termination would have occurred absent those activities.

For the reasons set forth below, I find the reasons advanced by Respondent for the termination of the seven employees to be pretextual. Meyer testified that, at the time of the February 5, meeting with the Union, Respondent did not need any help at the Shipp Avenue location. In fact, Meyer testified Respondent did not need any additional labor at the Shipp Avenue site until February 14, when John Allinder, a working foreman told Meyer that Allinder had to leave the site to take care of Allinder's son. Thereafter, Meyer testified he told Johnson that Meyer only needed some temporary help at Shipp Avenue to catch up due to Allinder's absence. Meyer's testimony that Respondent did not need any help until Allinder's February 14 departure, is belied by general contractor Edwards' daily notes at the jobsite. For on January 16, Edwards' notes reveal Respondent required additional staffing to meet production needs. From January 29 to 31, it is noted Respondent continued to delay inspection. From February 3 to 14, and 16 to 20, the notes reveal on a daily basis Respondent needs to staff up immediately. Thus. I have concluded Meyer was aware at the time of the February 5, meeting with the Union that Respondent was falling beyond at Shipp Avenue in the eyes of the general contactor, and that Meyer was aware as early as January 16, that he needed additional manpower. I have concluded, as King credibly testified, Meyer informed King Respondent delayed in using union referrals at the site prior to February 16, based on Edwards' objections of bringing union workers on the site.38

Moreover, Meyer's storey just does not make sense. He claimed that he had to bring union workers on the site due to Allinder's absence beginning on February 14, which caused Respondent to fall behind. However, Respondent hired King on February 17, Ford on February 18, and Huff, Forsha, and Waldo on February 20. Respondent would have me believe Respondent did not begin to fall behind until Allinder left on February 14, and that due to the

³⁸ Edwards only reluctantly cooperated with this proceeding, as the hearing was initially delayed due to subpoena enforcement questions concerning Edwards.

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departure of one sprinkler fitter for a relatively short period, Respondent had to hire four sprinkler fitters and an apprentice to make up for that one individual's lost production. I do not find this plausible. Rather, I conclude, as set forth above, Respondent was falling behind on the project beginning as early as January 16, and had to reluctantly resort to hiring Union referred employees to meet its production schedule.

Similarly, I do not credit Respondent's claim the union employees were hired on a temporary basis. First, Respondent stipulated the employees' termination on February 26, was not do to lack of work. This stipulation is supported by the record in that Respondent brought Foody on to the site on February 25, shortly after I have concluded Meyer decided to terminate employees for union activity. Meyer also testified he brought in Lowe, an independent contractor, with a crew of three to five fitters and laborers to replace the terminated union employees.³⁹ Thus, despite Respondent's claim that it had planned to terminate the employees and replace them with its own trained crews, Respondent replaced them in large part with independent contractors, and laborers referred by Labor Ready, a temporary agency. In fact, Meyer admitted it took on Seibel as a contract employee at the Shipp Avenue site, after Seibel had been terminated by Labor Ready for disciplinary reasons.⁴⁰

It is also undisputed that Meyer met with the Union officials on February 5, and sought their help to determine state licensing requirements for prospective projects in New York and in Virginia. The parties also began to discuss wages and benefits at this meeting. It is unlikely that Meyer would have solicited the Union's help in obtaining Respondent's requirements for future jobsites, while at the same time, as Meyer claims, he was only planning on using the Union referred employees on a temporary basis. It is also unlikely that Meyer would have agreed to meet with the Union and discuss union wage rates and benefits, as well as the benefits of Respondent's other employees, if as Meyer claimed it was his goal to terminate his relationship with the Union shortly after the February 20, meeting. In this regard, discriminatee King credibly testified Meyer asked him if he was willing to travel to Virginia, during their initial conversation, and that Meyer also told King about a second phase of the Shipp Avenue project. Meuse also testified Meyer asked if we willing to travel to the WSU job, however, Meuse responded he was not licensed in Ohio. Allinder also asked Meuse if he was willing to travel to Virginia for Respondent, and Meuse agreed to do so. McKim credibly testified that Allinder asked him if he was willing to travel to other locations, and McKim agreed to do so. Waldo testified Allinder told him there was plenty of work. In fact, Meyer admitted he guaranteed Meuse and McKim work as long as Respondent had work in Kentucky. While I find, Meyer placed no such limitation on the length of their employment, they had already worked there for about 3 months at the time of their February 26, termination, and admittedly the Shipp Avenue

³⁹ While Meyer testified Lowe had previously performed work for Respondent in January, Respondent's check records do not substantiate Meyer's claim, as they reveal Respondent first issued a check to Lowe in March. I therefore, do not credit Meyer's unsubstantiated claim that Lowe had worked for Respondent prior to the February 26, termination.

⁴⁰ It is stated in Respondent's position statement that Ford, King, Waldo, Forsha, and Huff were told they were told they were being hired on a temporary basis, and that they would work for one or two weeks maximum. This statement is not supported by the record. Meyer could not recall having any conversations with these individuals prior to hiring them, although he eventually stated he may have spoke to a couple of them without recalling the details. He never claimed that he informed them they were only being employed for a one or two week period. I find this is something he would have recalled if it occurred. Moreover, the credited testimony of the employees reveals they were given no such information. I have also credited Johnson that Meyer never told him the employees were being hired on a temporary basis.

project did not finish until May or June. Nevertheless, Respondent labeled Meuse and McKim as temporary employees in its position statement to the Region, as well as in a chart submitted as an exhibit in this proceeding. Respondent labeled them as temporary although they had hire dates preceding fitter Coffey and James Allinder, who also performed sprinkler fitting work, and Respondent labeled the latter two as permanent employees. Respondent had no basis for labeling Meuse and McKim as temporary save for their union activity. I have concluded that its labeling them as temporary was concocted as part of its defense to the Union's unfair labor practice charges and serves to establish Respondent's defense was pretextual, as well as exhibits Respondent's willingness to label employees as temporary to defeat the claims in the unfair labor practice charge as well as curb its backpay liability. For the reasons set forth above, I find Respondent's labeling of the seven alleged discriminatees as temporary was pretextual.

Respondent also argues the union referred employees, in particular the drillers were slow, that the fitters did not hang pipe according to specification, and that the Union referred employees committed vandalism at the jobsite. I find these contentions to also be pretextual. First, Respondent terminated Meuse and McKim along with the other employees. Both, had been working at the site for close to three months at the time of the termination. In fact, Meuse credibly testified Respondent left him in charge of the site on two separate occasions, once during the Christmas period, and the second time during Allinder's absence in February. Meyer also called Meuse on the day of Meuse' termination, and stated he was not opposed to bringing Meuse back to work. When Meuse asked about McKim's return, Meyer sited problems with the ongoing labor dispute about bringing too many Union workers back. There was no claim to Meuse that Meyer thought Mckim was a poor worker, or had committed any vandalism at the site. Meyer's response was a tacit admission that both Meuse and McKim were terminated for no other reason than their union activity. In fact, when Meyer was asked why he terminated Meuse at the hearing, his only response was "Good question." Meyer had no good explanation for his action, and I have concluded Respondent lumped Meuse and McKim in with the termination of the other employees solely for their Union activities.

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Regarding the other five employees, during the February 20, meeting, when the Union officials asked Meyer how the Union referred employees, who at that time were Ford and King were doing, Meyer's initial response was they were doing ok. However, during that same meeting, only after the Union informed Meyer that they were seeking a contract representing all of Respondent's employees did Meyer respond that there was a problem with their work. The timing of Meyer's change in his response raises a strong inference that the response was concocted. Moreover, according to the sequence of events related by Respondent, John Allinder was away from the Shipp Avenue site on from February 14 to 19. King began work there on February 17, and Ford on February 18. According to Respondent, Allinder did not return to the site until February 20, the morning of which he met with Meyer and then gave a negative evaluation of Ford and King's work. I find it unlikely, that Allinder having just returned to the site the morning he met with Meyer, had sufficient time to determine as Respondent claimed that King and Ford were performing poorly. Moreover, despite Meyer's claims of a negative report from Allinder, Meyer hired three more Union referrals to begin work that morning, and as the Union officials credibly testified Meyer was seeking additional Union referrals during the beginning of the February 20 meeting.

Meyer testified King was terminated on February 24, because Allinder had expressed a concern about King's ability to perform the work necessary on the site, and Waldo, Forsha, Huff, Ford, Meuse, and McKim were terminated on February 26 because of vandalism on the site. Meyer testified Allinder discovered the vandalism, and he also had serious concerns about the quality of their work, and about the morale on the project. Meyer testified that, prior to February

26, Allinder expressed concerns to Meyer on a daily basis about productivity, and lack of knowledge of installing pipe according to code concerning the named employees. Meyer testified vandalism became a concern to Meyer on February 25, in that Allinder noticed some pipe had been cut late in the day on February 24, and again on February 25. Meyer testified he had indicated he would be down to the site on February 26, to terminate the employees.

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The testimony of Meyer and Allinder had an air of improvisation about it. Allinder testified he reported to Meyer that the employees were not hanging pipe according to code from February 20 to 24, and that he was giving daily reports to Meyer about the employees' poor performance, including Meuse and McKim. Yet, Meuse and McKim had worked for Respondent, since December 9, with no prior similar complaints about their performance. In fact, Meyer called Meuse on February 26, and discussed calling him back to work. Allinder testified that between February 20 and 26, he had numerous conversations with Meyer about King and Ford's poor performance concerning drilling at Respondent. Yet, admittedly Meyer called Huff on February 24, and mistakenly told him he was terminated for poor performance at drilling holes. When Huff told Meyer that he was not assigned to drilling holes, Meyer recanted on the discharge. It would seem if Allinder had as many conversations as he claimed with Meyer concerning King and Ford's poor performance, that Meyer would have known the names of those employees rather than calling Huff and terminating him as a driller. Moreover, despite Meyer's claim that the named employees were terminated for performance and vandalism, Meyer had told McKim during a phone call on the evening of February 20, the day three of the five employees were hired that Meyer intended to terminate them in about a week. The reason Meyer gave to McKim at the time was that they were temporary employees. However, I have concluded that it was no coincidence that Meyer's remarks to McKim came shortly after the February 20, meeting with Zimmer and Johnson where they were seeking a union contract for all of Respondent's employees.

Respondent's storey continued to change as pressure by the Union continued to grow, as on the evening of February 23, Meyer wrote Johnson in response to a new resume forwarded by Johnson that several of the drillers were underperforming and needed to be replaced. On February 26, while Meyer testified that Allinder had uncovered incidence of vandalism at the site such as cut pipe, with Allinder asserting in his testimony that he also found pipe with nails in it. However, when Meyer told the employees of the reasons for their termination, he failed to mention any incidence of vandalism to the pipe. Rather, the recording of the conversation reveals the only thing he cited to the employees pertaining to Respondent's property was union stickers on Respondent's tools.41 Similarly, when Meyer later spoke to Meuse on February 26, no incidence of vandalism was sited as a reason for the termination. Rather, Meyer just stated he did not think the men were getting the work done fast enough to justify what Respondent was paying them. Thus, Respondent presented an ever shifting storey for the reasons the employees were terminated. On the other hand, Huff credibly testified he was never disciplined while working for Respondent, and that Allinder told him on more than one occasion including on February 25, that he was doing a great job and to keep up the good work. Ford credibly testified he was not disciplined while working for Respondent and no one said anything to him about his work performance. Waldo also credibly testified he received no discipline at Respondent, and that at the end of each day Allinder complimented the employees' work performance. King credibly testified he was never disciplined on the job, and that on February 24, Allinder told him he was doing a good job, and to keep up the good work. The named employees who were asked credibly denied any acts of vandalism to the pipes, or that

⁴¹ Meyer, in his testimony, did not claim the stickers on the tools was a terminable offense. Rather, according to Meyer, it just required a warning.

they saw such activity on the jobsite.⁴² Noting that Respondent's witnesses never claimed they directly saw the Union referrals committing any acts of vandalism, and for the reasons stated above, I have concluded the allegations of vandalism to the pipes were concocted. I have found Respondent's defenses concerning the termination of the seven employees are pretextual. Accordingly, I find the discharge of Meuse, McKim, King, Ford, Huff, Forsha, and Waldo was violative of Section 8(a)(1) and (3) of the Act.

2. The Refusal to hire case

Travis Anders has been a member of the Union since October 2008. He has been an apprentice for two years. He testified he has a license in Ohio to work as an apprentice. Anders testified he has worked with plastic pipe and that he had at least a year's experience using Blaze Master pipe. Franklin informed Anders about Respondent. Anders testified he was not working at the time, and Franklin told him of some job opportunities at Respondent at the WSU and Shipp Avenue projects. Anders gave Franklin his resume over the phone, and Franklin informed him that night or the next day that he had submitted the resume to Respondent. Anders' resume showed an Ohio address, that he was Blaze Master certified, and his most current employment was in Ohio. Anders testified he never attempted to contact anyone at Respondent directly, and he was never contacted by Respondent. Anders testified he would have been willing to travel for Respondent, and he would have accepted a job if Respondent had offered it to him. Anders testified he understood he was applying to work for Respondent at either the Shipp Avenue or WSU projects. Franklin's testimony revealed he faxed Ander's resume to Meyer on February 9.

Aaron Shull has been a union member since 2002. Shull has been a journeyman sprinkler fitter since 2005. Shull was informed by Johnson around early February that Respondent might have some work around Shull's area in Louisville. Shull testified he met John Allinder on February 6, when Shull went to the Shipp Avenue site. Allinder told Shull there was work available. Shull gave Allinder a resume which he was to give to Meyer. Shull emailed his resume directly to Meyer on February 7 asking for employment. Shull's email listed a Louisville address and he stated he had spoken with John Allinder. The resume listed Local 669 Joint Apprenticeship training, and included a Local 669 Sprinkler Fitter as a reference. Meyer responded by email on the same date stating he would contact Shull early the following week. Johnson also emailed Meyer a copy of Shull's resume on February 7. In the email, Johnson told Meyer that Johnson had stopped by the Shipp Avenue site and had introduced Shull and King to Allinder.

⁴² I did not find Allinder, considering his demeanor, to be a particularly credible witness. As set forth above, I did not find him to be truthful as to the nature of his meetings with Johnson concerning the Union. I also concluded he purposefully undervalued Meuse and McKim's performance in order to help justify their termination. He only belatedly testified about vandalism at the jobsite, initially testifying it only related to the union stickers on Respondent's equipment. He then stated he saw small amount nails protruding out of pipe prior to the February 26, discharge, stating, "I don't know, I think there was two or three obvious ones." However, his testimony grew more expansive concerning the alleged vandalism the longer he was on the stand. In any event, noting Meyer did not mention vandalism concerning damage to pipes to the employees when he terminated them on February 26, or later that day when he discussed the discharge with Meuse, I find that subsequent allegations of vandalism to the pipe were concocted as part of Respondent's defense.

⁴³ Shull testified he was not working at the time he met with Allinder, and that he had been unemployed since November 28, 2008.

Shull testified Meyer called Shull around three days after Meyer received Shull's resume. Shull testified he told Meyer he had gone back to work for his prior company Ohio Valley Sprinkler but the work was temporary and would probably last a couple of weeks. Shull testified Meyer told him to give him a call when the job was over as Meyer might have a spot for him.⁴⁴ Shull estimated that his job with Ohio Valley Sprinkler ended around March 1. When the job ended Shull sent Meyer an email, dated March 4, stating Shull was from Louisville and asking if Meyer still needed help. Meyer responded by email stating no thank you the opportunity was temporary. Shull testified he was available for and would have accepted work when Meyer sent the March 4, response. He testified he had traveled to different job locations throughout the Indiana and Kentucky region. Shull testified he is not licensed as a sprinkler fitter in Ohio.

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Michael Stethem, a two year journeyman, has been a member of the Union for seven years and has worked in the sprinkler fitting trade for that time. Stethem testified he has experience with Blaze Master pipe. Stethem learned about Respondent through Franklin shortly after Stetham had been laid off on January 30. Stethem met with Franklin on February 10 at a restaurant near Dayton. Stethem testified that union members on layoff Matthew Macke and Cory Strader also attended the meeting.⁴⁵ Stethem testified Franklin stated he had a meeting with Meyer, who was looking for help, and Franklin gave Stethem Meyer's email address. Stethem emailed his resume to Meyer on February 10, and Meyer responded on the same date stating he would be in touch if he needed help. Stethem's resume included a listing of prior employment with Central Fire, a union company, from August 2000 to January 2009. The resume stated Stethem's education was with the Pennsylvania State University World Campus, which is a union sponsored training program. Stethem identified his Ohio sprinkler fitters' license. Stethem testified a couple of days after he received Meyer's email response, Stethem left Meyer a voice message thanking Meyer for responding to Stethem's email and asking if there was any possibility of employment. Stethem did not receive a response to his call. He testified he would have accepted the job if it was offered to him. He testified he has traveled as a sprinkler fitter, and he would have been willing to travel for Respondent. Stethem testified he was reemployed by Central Fire Protection on April 27, and had worked there full time since at the time of his testimony. Stethem testified he was earning \$32 an hour at Central Fire Protection. He testified Franklin told him Respondent was paying \$18 to \$20 an hour.

Macke, has been a member of the Union for about four and half years. Macke is a level 10 apprentice, which is the highest level of apprentice. Macke has experience working with Blaze Master pipe. Macke testified he met with Franklin, along with a few other men, at a restaurant in Ohio. Franklin gave Macke the contact information for Respondent and told Macke to email his resume. Macke emailed his resume to Meyer on February 10. In the email, Macke introduced himself stating he was referred by Franklin. Meyer responded that same date stating he would contact Macke if he needed help. Macke stated he worked for Central Fire Protection from 2005 to 2009 in the resume. Macke testified he was on layoff from Central Fire at the time he sent his resume to Meyer. Macke testified he is licensed to work in Ohio. Macke's resume contained an Ohio address. Macke testified he had no further communication with Respondent following his email from Meyer. He testified he had would have worked for Respondent if he had been offered a job. He testified he has traveled often as the sprinkler

⁴⁴ Shull later answered in response to a leading question that Meyer told him he would hold a spot for Shull. In the face of Shull's prior testimony, I do not credit his subsequent claim that Meyer guaranteed a spot for him, as opposed to just stating there might be one.

⁴⁵ Stethem testified he and Macke had been laid off from Central Fire Protection. Macke testified Central Fire is a large union contractor.

fitter, and he would have traveled for Respondent. Macke returned to work for Central Fire Protection on May 11, 2009. Macke testified that he is earning \$28.67 there, and working close to his home.

Daniel Cervi was a member of the Union for a little over a year when he testified. Cervi has worked in the sprinkler fitter trade since 1990. He testified he was a foreman on job in Phoenix where they used Blaze Master pipe. Cervi testified he had conversations with Meyer about working for Respondent before Franklin contacted Cervi about Respondent and that he initially approached Respondent on his own.⁴⁶ Cervi testified he tried to get in touch with Meyer, and they played phone tag from the end of December 2008 through the end of January. Cervi testified he had a brief conversation with Meyer on the phone, around the end of December. Cervi testified Meyer discussed Cervi working for Respondent as an independent contractor at either the WSU or Shipp Avenue project. Cervi was not interested in working as an independent contractor because he did not have the tools, or carry liability insurance.

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Cervi testified that, around February 9, he went to the WSU job, along with Franklin, and Cervi dropped off his resume. Franklin confirmed they went to the site, spoke to James Allinder, and Cervi gave Allinder his resume. Cervi testified Allinder stated they were behind and needed to get manned up. Cervi testified he tendered his resume, and was told the resume would be forwarded to Meyer. Cervi testified Franklin told him he would also forward a copy of Cervi's resume.⁴⁷ The resume reveals Cervi holds certification for Blaze Master pipe, and he is a licensed installer with 18 years experience. The resume stated Cervi had experience as a foreman, and he had been working in Ohio from June 2008 to the present. Cervi's resume showed an Ohio address. Cervi testified he is licensed to work in Ohio. Cervi testified he would have worked for and traveled for Respondent if he was covered for hotel expenses, or earning enough money to pay those expenses so he would not lose money by working. Cervi testified he worked for Brigade Fire Protection on and off in 2009 for \$18 an hour.

On Monday, February 23, Johnson emailed Meyer the resume of Nick Stone stating he had Blaze Master experience. Meyer responded by email on that date at 8:03 p.m. eastern time, stating "Thanks but we are not interested in Nick, several of the existing drillers are under performing. They will need to be replaced by individuals with more experience that have been trained by Classic Fire Protection and have the ability to keep up." Meyer's email was sent to Johnson after Johnson notified Meyer that the Union had filed a petition for election. Stone's resume showed a Louisville address, and stated he was seeking immediate employment. The resume showed he had Blaze Master Pipe experience and training. The resume listed prior employers, stated Stone had 7 and ½ years experience in the sprinkler trade, and had been through apprentice training.

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Meyer denied refusing to hire: Cervi, Shull, Anders, Macke, or Stethem because they were union members. Meyer testified he did have a conversation with Cervi in which Cervi chose not to accept the terms Meyer was offering. Meyer testified Shull had a good resume and followed up with Meyer frequently. Meyer testified that when they decided to add someone, Shull was one of the first individuals Meyer offered a job. Meyer testified, at that time, he knew

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⁴⁶ However, Cervi also testified he learned Respondent might be hiring by talking to Franklin, who told him Respondent had a job in Dayton and to apply. I have concluded that Cervi did in fact approach Meyer about a position, and that Franklin only later contacted Cervi and asked him to apply.

⁴⁷ Franklin faxed Cervi's resume to Meyer on February 9. He stated in the cover letter that he had introduced Cervi to Allinder earlier that day.

Shull was a member of Local 669. Meyer testified Shull said he had another job lined up. Meyer testified he thought he knew Anders was in the Union. Meyer testified he did not offer Anders a job because he did not think Respondent needed him. Meyer testified he did not recall having any discussions with Macke. Meyer testified he probably knew Macke was a member of the Union if his resume was sent to Meyer by Franklin or Johnson. He testified that did not make a difference as to his decision to hire him. Meyer testified he just did not think Respondent needed his services. Meyer testified he thought Cervi, Anders, Shull, and Macke were applying for positions at WSU. Meyer testified most of the resumes were sent to him by Johnson or Franklin and they would fax or email them to him. Meyer testified this was prior to the February 26, layoff. Meyer testified he did not recall having any conversations with Stethem. Meyer testified that he thought his decisions not to hire these individuals all occurred prior to February 20. Meyer testified he never refused to hire someone on the WSU project because he was involved with or member of the union. Meyer testified Respondent hired five men through Johnson in February 2009 knowing they were members of the union. He testified their union membership did not matter to him.

a. Analysis

In Allstate Power Vac, Inc., 354 NLRB No. 111, slip op. at 2-3 (2009), the Board stated:

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In order to establish a refusal-to-hire violation under *FES*, 331 NLRB 9 (2000), enfd. 301 F.3d 83 (3d Cir. 2002), the General Counsel must establish, by a preponderance of the evidence, the following elements:

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(1) that the respondent was hiring, or had concrete plans to hire, at the time of the alleged unlawful conduct; (2) that the applicants had experience or training relevant to the announced or generally known requirements of the positions for hire, or in the alternative, that the employer has not adhered uniformly to such requirements, or that the requirements were themselves pretextual or were applied as a pretext for discrimination; and (3) that antiunion animus contributed to the decision not to hire the applicants.

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Id. at 12 (footnotes omitted)

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Once the General Counsel has met this initial burden, "the burden will shift to the respondent to show that it would not have hired the applicants even in the absence of their union activity or affiliation." Id. (footnote omitted).

In order to establish a refusal-to-consider violation under *FES*, supra, 331 NLRB at 15, the General Counsel has the initial burden of showing "(1) that the respondent excluded applicants from a hiring process; and (2) that antiunion animus contributed to the decision not to consider the applicants for employment." If the General Counsel establishes this, the burden then shifts to the respondent "to show that it would not have considered the applicants even in the absence of their union activity or affiliation." Id.

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In Toering Electric Co., 351 NLRB 225, 233-234 (2007), the Board majority stated:

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We now hold, for all of the reasons stated above, that the General Counsel's burden of proof in all hiring discrimination cases includes the burden to prove that the alleged discriminatee was an applicant entitled to protection as a Section 2(3) employee, i.e., an applicant genuinely interested in seeking to establish an employment relationship with the employer.

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This requirement embraces two components: (1) there was an application for employment, [FN50] and (2) the application reflected a genuine interest in becoming employed by the employer. As to the first component, the General Counsel must

introduce evidence that the individual applied for employment with the employer or that someone authorized by that individual did so on his or her behalf. In the latter instance, agency must be shown. [FN51]

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As to the second component (genuine interest in becoming employed), the employer must put at issue the genuineness of the applicant's interest through evidence that creates a reasonable question as to the applicant's actual interest in going to work for the employer. [FN52] In other words, while we will no longer conclusively presume that an applicant is entitled to protection as a statutory employee, neither will we presume, in the absence of contrary evidence, that an application for employment is anything other than what it purports to be. Consequently, once the General Counsel has shown that the alleged discriminatee applied for employment, the employer may contest the genuineness of the application through evidence including, but not limited to the following: evidence that the individual refused similar employment with the respondent employer in the recent past;or engaged in other conduct inconsistent with a genuine interest in employment. Similarly, evidence that the application is stale or incomplete may, depending upon the circumstances, indicate that the applicant does not genuinely seek to establish an employment relationship with the employer. [FN53] Assuming the employer puts forward such evidence, the General Counsel, to satisfy the genuine applicant element of a prima facie case of hiring discrimination, must then rebut that evidence and prove by a preponderance of the evidence that the individual in question was genuinely interested in seeking to establish an employment relationship with the employer. Thus, the ultimate burden of proof as to the Section 2(3) status of the alleged discriminatee-applicant rests with the General Counsel [FN54]

We emphasize that proof of an applicant's genuine job interest is an element of the General Counsel's prima facie case under *FES*. Thus, if at a hearing on the merits, the employer puts forward evidence reasonably calling into question the applicant's genuine interest in employment, the General Counsel must prove the applicant's genuine interest by a preponderance of the evidence in order to prove that the applicant is an employee within the meaning of Section 2(3). An employer's *motivation* for making an alleged discriminatory hiring decision does not become relevant until the General Counsel satisfies his burden of proof on the applicant's statutory employee status.

In *Toering Electric Co.*, supra at 233, fn. 51, the Board further stated, "The fact that applications may be submitted in a batch is not, in and of itself, sufficient to destroy genuine applicant status, provided that the submitter of the batched applications has the requisite authorization from the individual applicants." In *Mammoth Coal Co.*, 354 NLRB No. 83 (2009), slip op. at 2, the Board cited and quoted from *Toering Electric*, 351 NLRB 225, 233 (2007), and stated the following:

Mammoth's contention that the submission of application in bulk indicates a lack of genuine interest in employment also fails. The Board specifically held in *Toering* that 'the fact that applications may be submitted in a batch is not, in and of itself, sufficient to destroy genuine applicant status, provided that the submitter of the batched applications has the requisite authority from the individual applicants.' 351 NLRB at 233 fn. 51. That situation was the situation here: the individual applicants filled out the applications themselves, signed them, and gave them to the Union to convey to Mammoth. Thus, even if conveying the applications could be said to be 'applying' on their behalf, id. at 233, the applicants clearly authorized the Union to do so by giving it their filled-out and signed applications.

In Sproule Construction Co., 350 NLRB 774, 775 (2007), the Board stated that, "Under FES, if, as here, the General Counsel seeks a backpay and instatement remedy for a refusal-to-

hire violation, the General Counsel must prove, among other things, that there were vacancies for the alleged discriminates. 331 NLRB at 14." In reversing, in part, the judges finding of a refusal-to-hire violation with regard to all 29 applicants, the Board, found the General Counsel proved 12 vacancies, but allocated three of those vacancies to unlawfully terminated employees whose employment was terminated before the respondent had hired the 12 new employees. Thus, although there were 12 new hires the Board only found a refusal to hire violation with respect to 9 applicants, and a refusal to consider for hire violation with respect to the remaining 20 applicants. The Board specifically found that, under *FES*, the General Counsel must prove the vacancies at the unfair labor practice hearing and proof of vacancies cannot be deferred to the compliance stage.

In the instant case, the credited testimony reveals Johnson and Zimmer met with Meyer on February 20, at which time Union officials asked Meyer how the men they had referred were performing and Meyer said okay. During the meeting, per Zimmer's credited testimony, Meyer stated he needed three additional \$10 an hour drillers, and he needed three more installers. Meyer stated the installers could be journeyman or apprentices, but they had to be experienced at working with plastic pipes. However, when the union officials pressed Meyer for a contract for all of his employees, including those the Union had not referred, Meyer's attitude changed. He then complained about the work of the current union referrals and abruptly terminated the meeting. The evidence reveals that by February 26, Meyer had terminated the employment of all the union referrals including two who had worked for Respondent since December. As set forth above, I have found the reasons Respondent advanced for the termination to be pretextual, and that the discharge of the seven employees was violative of Section 8(a)(1) and (3) of the Act. Respondent stipulated that the termination of the seven employees was not due to lack of work. Moreover, I have concluded that the employees had not been hired on a temporary basis as Respondent claimed.

On the morning of February 23, Johnson phoned Meyer and told him that Johnson had filed a petition for election with Region 9. Meyer responded he wished Johnson had not done that, and that Meyer did not want Respondent to be unionized. On February 23, Johnson emailed Meyer the resume of Nick Stone, listing a Louisville address, stating he had Blaze Master experience. Meyer responded by email on that date at 8:03 p.m. eastern time, stating "Thanks but we are not interested in Nick, several of the existing drillers are under performing. They will need to be replaced by individuals with more experience that have been trained by Classic Fire Protection and have the ability to keep up." Meyer's lumping of Respondent's refusal to consider for hire other union referred applicants, with employees I have concluded were unlawfully discharged, establishes the refusal consider for hire Cervi, Shull, Anders, Macke, and Stethem on or after February 20, to also be predicated on animus towards their union affiliation and violative of Section 8(a)(1) and (3) of the Act.⁴⁸

⁴⁸ I do not credit Meyer's contention that he thought Union applicants Cervi, Shull, Anders, Macke, and Stethem were only applying for the WSU project. Lumping Shull in this group further supports my conclusion that Meyer, after February 20, just refused to consider their applications as Shull had visited the Shipp Avenue project in Louisville, met with John Allinder there, and repeatedly told Meyer Shull was a Louisville native. Moreover, the evidence shows sprinkler fitters routinely traveled in this field, that Meyer had posed questions to his other employees as to whether they were willing to travel, and that he transferred employees and contract workers between the Shipp Avenue and WSU site including employee Morris who was hired after the February 26 discharge. Meyer's failure to ask the union applicants if they were willing to travel confirms that he had unlawfully excluded them from Respondent's selection process based solely on their union status.

I find that, under the tenants of FES, supra, the General Counsel has also established a prima facie case of refusal to hire for Cervi, Shull, Anders, Macke, and Stethem in that Meyer's statements at the February 20 meeting revealed concrete plans to hire at least three installers at the journeyman or apprentice level, and three other individuals qualified to drill holes, and that union animus was the overriding reason for Respondent's refusal to hire at least some of the union referred applicants. In this regard, the evidence and testimony of the applicants uniformly established they were journeymen or experienced apprentice sprinkler fitters with a background in plastic pipes. The evidence also shows Respondent had knowledge of the applicants' union status. Union official Franklin faxed Anders resume to Respondent on February 9, thereby establishing Respondent's knowledge of his union status. Macke sent an email on February 10, to Meyer stating Macke had been referred by Franklin with his resume attached. Macke's educational background and prior employer were the same as Stethem, who also emailed his resume to Meyer on February 10. Given the timing of the submission of Stetham and Macke's resumes, and their similarities in background, there was sufficient basis for Meyer to conclude upon review of the resumes that Stetham, like Macke, was also a Franklin referral, and I so find.⁴⁹ Cervi and Franklin went to the WSU jobsite on February 9, where they spoke to James Allinder and Cervi gave Allinder a copy of his resume. Franklin also faxed the resume to Meyer on February 9.50 Union official Johnson emailed Shull's resume to Meyer on February 7. Shull's resume also demonstrated his union background on its face.⁵¹ Thus, the General

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I do not find that General Counsel has established a prima facie case of refusal to hire or consider for hire with respect to Nick Stone. Unlike the other applicants, Stone did not testify. There is no credible evidence that Stone authorized Johnson to tender Stone's resume to Meyer, or that Stone was out of work or seeking employment at the time it was tendered. I have considered Johnson's statement in his email to Meyer that "Stone asked me to email the resume below to you." However, unlike the cases where employee signed applications are tendered by a union official, Stone's resume contains no signature or independent validation from Stone that he was actually seeking employment. If fact, the timing of Johnson's tender of the resume is somewhat suspect in that it came shortly after Meyer terminated the February 20 meeting with the Union officials because of the Union's attempts to organize Respondent's employees, and on the same day Johnson informed Meyer of the Union's petition for election, to which Johnson credibly testified Meyer gave a negative response. It is just as likely that, in the circumstances here, Johnson forwarded Stone's resume to bait Meyer into a response, than the fact that Stone was a serious applicant. Accordingly, I do not find the General Counsel has met its burden of establishing that Stone was a legitimate applicant. Accordingly, the Section 8(a)(1) and (3) allegations pertaining to Stone are dismissed. See, Mammoth Coal Co., 354 NLRB No. 83, slip op. at 2 (2009), and *Toering Electric*, 351 NLRB 225, 233 (2007).

⁴⁹ I do not find the fact that Stethem and Macke subsequently returned to their prior employer at a higher wage rate than Respondent was offering to be determinative here as to whether Respondent unlawfully refused to hire or consider to hire them. However, their subsequent employment with their predecessor employer might impact on their backpay and instatement rights with Respondent.

⁵⁰ I do not find Cervi's prior refusal to accept work from Respondent as a subcontractor undermines his February 9 application for employment as an employee. There is no evidence that Meyer knew Cervi was a union member at the time he offered him a position as a sub contractor. Moreover, Respondent hired employees subsequent to February 9, and Meyer's statements at the February 20, meeting reveal Respondent had an intent to continue to hire employees until the Union officials pressed him that all of his employees be covered by a union contract.

⁵¹ Meyer contacted Shull a few days after he applied on February 7, offered him a position.

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Counsel has established Meyer had knowledge of the five named applicant's union background.⁵²

The Board's pronouncements in *Sproule Construction Co.*, 350 NLRB 774, 775 (2007), require the General Counsel to also establish there were vacancies for the applicants to obtain a backpay and instatement remedy for a refusal-to-hire violation. However, the General Counsel provided no break down in his brief as to his position on which position for hires after February 26 should have gone to the February 25 and 26 dischargees, and which, if any, should have gone to the named applicants.

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In parsing through the data provided at the hearing, I do not find as persuasive that Respondent mainly used contractors and Labor Ready personnel after February 26 that it would not have hired the union referrals as permanent employees in their stead, absent Respondent's discrimination against them. In this regard, Meyer's statements during the February 20, indicated a willingness to continue to hire union applicants until the union officials pressed Meyer for a contract covering all of Respondent's employees. I have concluded Respondent thereafter staffed the Louisville project largely with Labor Ready personnel, transfers from WSU, and individuals it labeled as subcontractors, rather than hire regular employees as part of its effort to avoid liability for its unfair labor practices.

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Meyer testified that the workers, who finished the Shipp Avenue project after February 26, were John Allinder, Williamson, Pine, Coffey, Foody, and Lowe and his crew. Fine and Coffey were mainly assigned to the WSU location, but spent some time after the February 26, discharge working at the Shipp Avenue project. I have concluded Respondent has not established it would have transferred those two individuals to Shipp Avenue after February 26, absent its unlawful termination of the seven union adherents. Accordingly, I have concluded General Counsel has established work performed by WSU personnel at Shipp Avenue after February 26 would have been performed by the seven discharged union referrals. The record also shows that Foody, a journeyman, was first brought on to the Shipp Avenue jobsite on February 25, and he did not begin to perform hands on work until February 26. Respondent had exhibited a fixed intent to terminate the union referred employees following the February 20 meeting with the union officials. Accordingly, although Foody was brought to the site the day

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Shull turned down the position stating he had been recalled by his prior employer. Shull testified he was again laid off on March 1, and he recontacted Meyer by email on March 4, again seeking employment. Meyer responded that the position was no longer available. I have credited Shull's testimony here that he was laid off on March 1, and that he was available for work. While I find that Shull was willing to exaggerate at one point in his testimony the nature of Meyer's prior job offer, I do not find, considering his demeanor, that he would completely fabricate a March 1 layoff, or that he was not a legitimate applicant. I do not find that Meyer's offering Shull a position around February 10, undercuts a finding of a violation of refusal to hire or consider Shull for hire when he reapplied on March 4. In this regard, Meyer's attitude changed toward the hiring of union referred applicants during the course of the February 20 meeting.

⁵² Meyer did not claim lack of knowledge of their union background during the course of his testimony.

⁵³ The records tendered into evidence fail to substantiate Meyer's claim that James Allinder ever worked at the Shipp Avenue site.

⁵⁴ Respondent's records show Coffey received a pay check dated February 17, April 29, and May 5 for working at the Shipp Avenue location. Pine received a pay check dated April 29 for working at the Shipp Avenue location.

before six of them were terminated, I have concluded he was brought there as part of an effort to replace them. Meyer also admitted that Lowe and his crew were brought on to the site to replace the union referred employees discharged on February 26. Meyer testified Lowe had a crew of between two and four individuals working for him, and some were laborers and some were sprinkler fitters. Lowe is a journeyman sprinkler fitter and he also worked on the project establishing that his crew ranged from between three and five individuals. The record shows Jerry Seibel worked an extended period for Respondent at the Shipp Avenue site as a laborer, first as a short term referral by Labor Ready, and then as a contractor worker working directly for Respondent. Raymond Hayes was referred by Labor Ready and worked at the Shipp Avenue site for 26 days as a Labor Ready referral.

Respondent's records show that Gary Morris began working for Respondent as a permanent employee, with his first paycheck dated March 3. Meyer testified Gary Morris is a general laborer working at the WSU job. However, Respondent's records show Morris also worked at the Shipp Avenue site. Respondent's records show Christopher Kelson was hired as a permanent employee with his first paycheck dated March 17. Kelson's last check was dated March 31. Respondent's records show Kelson worked at the Shipp Avenue project. Meyer identified a check to Brian Cummings who performed work as a contract laborer for the WSU job. The first check to Cummings is dated April 3. Meyer testified Cummings did deliveries, clean up, and possibly drilled some holes.

Meyer admitted the records Respondent supplied in response to the General Counsel's subpoena were incomplete. However, based upon the records provided as well as Meyer's testimony the evidence reveals that Respondent transferred employees between the Shipp Avenue and WSU locations. The Respondent also sent its employees and contract workers to other locations as well. The testimony reveals Respondent had journeyman and apprentice sprinkler fitters in addition to pipe installation, perform such tasks as drilling, carrying pipe, and clean up work, and that it also assigns these non-installation tasks to laborers. Thus, I have concluded the Union referred journeyman and apprentice applicants were eligible for the work performed by the above described journeyman, Labor Ready personnel as well as individuals Meyer labeled as laborers. This includes the work performed by Cummings, who Meyer testified may have performed some drilling work for Respondent.

In *Sproule Construction Co.*, supra, the Board stated the General Counsel is required to show available positions to establish a refusal to hire as opposed to a refusal to consider for hire. In that case, positions were first allocated to unlawfully terminated employees. Here there are seven of those employees who were working at the Shipp Avenue location. It appears they were primarily replaced by Foody, Seibel, Hayes, and Lowe and his crew, and Labor Ready personnel Johnson, Elmore, Balley, and Warrick. Accordingly, I find the discharged employees were entitled to the work performed by the aforementioned individuals at Shipp Avenue, as well as to work performed by WSU based employees who were transferred to the Shipp Avenue site on or after February 26. I find applicants Cervi, Shull, Stetham, Macke, and Anders are entitled backpay and instatement rights based on the work performed by Cummings, Morris, and Kelson, and that it should be determined in compliance proceedings which three of the five named applicants would have been hired for that work.⁵⁵

⁵⁵ I do not find persuasive the General Counsel's contention that the Union applicants are entitled to backpay for the work performed by Travis Gilliam, who the General Counsel asserts began working at the WSU site during the week ending February 14. The testimony of the General Counsel's witnesses reveals that, prior to February 20, Meyer was considering using union referred personnel at sites in New York and Virginia, as well as at other locations.

3. The terminated employees and union referred job applicants were salts

Counsel for the General Counsel argues in his post-hearing brief that the discriminatees are not salts, and therefore the Board's remedial pronouncements in *Oil Capitol Sheet Metal*, 349 NLRB 1348 (2007), concerning salts do not apply here. For the reasons set forth below, I disagree and find the Union was engaged in a "salting" campaign at Respondent and the discriminatees, who uniformly sought employment at Respondent at the Union's behest are "salts". Therefore, the remedy as set forth in *Oil Capitol Sheet Metal*, supra concerning backpay and reinstatement and instatement rights is applicable.

In Flour Daniels, Inc., 353 NLRB No. 15 slip op. fn. 10 (2008), it was stated that:

Under Board law, salts are 'individuals, paid or unpaid, who apply for work with a nonunion employer in furtherance of a salting campaign.' *Oil Capitol,* supra at 348 fn. 5. A salting campaign, in turn, is defined as a campaign in which a union sends its member(s) to an unorganized jobsite 'to obtain employment and then organize the employees." *Tualatin Electric,* 312 NLRB 129, 130 fn. 3 (1993), enfd. 84 F.3d 1202 (9th Cir. 1996).

In *Tualatin Electric*, Id, at 130, fn. 3, it was stated more specifically:

'Salting a job' is the act of a trade union in sending a union member or members to an unorganized jobsite to obtain employment and then organize the employees. A "salted" member or "salt" is a union member who obtains employment with an unorganized employer at the behest of his or her union so as to advance the union's interests there.

I do not find that the above pronouncements require an employee to actively engage in organizing activity for that employee to be a salt. It is clear that there can be overt and covert salts and that each are taking instructions from the union as part of its strategy to organize an employer's employees. Salts apply in furtherance of a union's goals in an overt capacity where they reveal their union status at the time of their application, or in a covert status where they conceal their union allegiance at the time they apply in the hopes of securing employment. See, *Allstate Power Vac, Inc.*, 354 NLRB No. 111 (2009).

In Oil Capitol Sheet Metal, 349 NLRB 1348, 1353 fn. 22 (2007), it was stated:

A discriminatee's status as a salt will often be established in the original unfair labor practice stage of litigation. If not litigated there, however, a respondent may introduce evidence on this point during the compliance proceeding. Contrary to the dissent, we do not foresee an explosion of litigation about this issue. In any case, the narrowly defined, easily proven factual issues will be whether a union was engaged in a salting campaign and whether a discriminatee joined or sought to join the targeted employer's workforce in order to further that campaign.

Respondent has also in the past used contract personnel, in fact, Cervi had admittedly been offered such position sometime in January. Thus, I do not find the General Counsel has established Respondent's personnel decisions made prior to February 20, were discriminatorily motivated.

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In the instant case, Union Organizer Johnson first learned Respondent was performing work at the Shipp Avenue jobsite in Louisville, Kentucky around October 2008. Johnson testified that when he learned about the Shipp Avenue job he checked to see if the contractor had a license in the state of Kentucky with the state fire marshal. Johnson testified he learned the underground portion of the project was installed by an unlicensed contractor, and the overhead work was awarded to Respondent. Johnson later testified when he checked he found Respondent was not licensed and Johnson turned the matter over to the state fire marshal's office. I find Johnson's checking on Respondent's licensing status was the first step in the Union's salting campaign to put pressure on Respondent as part of the Union's planned effort to force Respondent to agree to a union contract.

Johnson testified he contacted a couple of the Union's members to see if they wanted to work for Respondent. Meuse was the first union member Johnson contacted. Johnson testified he asked Meuse to apply for a job at Respondent and Meuse went to the job and applied. Johnson estimated that this took place in the beginning of December 2008. Johnson testified he instructed Meuse to go to work and to do the best job he could. Johnson testified Meuse was not to engage in any organizing activities at the start of his working for Respondent. Thus, as Johnson's testimony reveals, Meuse sought and obtained employment at Respondent under Johnson's direction, and he received instructions from Johnson as to how he was to conduct himself at the jobsite. Meuse confirmed that, around December 5, Johnson asked him to try and get employment at Shipp Avenue. He testified he concealed his union membership status from Respondent's officials because he did not think they would hire him if he informed them of it. Meuse testified Meyer asked him if he had a helper and as a result McKim secured employment with Respondent. McKim, like Meuse, was a union member at the time he started working for Respondent. McKim testified that, like Meuse, McKim spoke to Johnson before McKim began working for Respondent.

McKim credibly testified that he and Meuse told Respondent Foreman John Allinder that they were members of Local 669 on January 29. McKim testified he told Allinder of his union status on January 29, because Johnson instructed him to do so. Thus, like Meuse, McKim was acting under Johnson's direction pertaining to his union activity at the jobsite. In fact, Meuse was more explicit in his testimony as to what he and McKim revealed to Allinder as to their purpose of working for Respondent. Meuse testified he and McKim told Allinder they were union and were represented by the Union. He testified they told Allinder they were sent there to show Allinder they could do the job twice as fast and to try and get Meyer to become a union company. Meuse told Allinder that he had been union since 1997. Meuse testified he told Allinder about the Union's insurance and he discussed the benefits of being organized with Allinder. Meuse testified he had between two and four conversations with Allinder about the Union prior to Meuse' February 26, termination. Along these lines, Johnson testified he was present at the Shipp Avenue jobsite on February 25, when Meuse and McKim were wearing union shirts and hats at the jobsite in the presence of Allinder and Williamson. Williamson, although not a union member, was also wearing a union shirt at the time. Thus, Meuse and McKim were clearly salts, they took employment with Respondent as covert salts at Johnson's direction, revealed their union status to Respondent at his direction, and thereafter actively sought to convince Respondent's personnel of the benefits of the Union through conversation, and the wearing of union attire, or both.

Union Organizer Franklin testified he first learned of Respondent by receiving a call from Johnson. Franklin testified he called Meyer in late January to set up a meeting. The evidence reveals that, as instructed, Meuse and McKim performed their duties well for Respondent. I do not view the timing of their informing Allinder of their union status and the Union's efforts to set up a meeting with Meyer to be coincidental. Rather, as planned, Meuse and McKim

demonstrated to Meyer that union workers were good employees close in time to the Union's efforts to meet with Meyer to try to convince him to hire more union referrals and to eventually sign a union contract.⁵⁶

Union officials Johnson, Franklin, and Zimmer met with Meyer on February 5. During the meeting, they talked about wages, benefits and Meyer's manpower needs. As reflected in Edwards' reports, and the credited testimony of the union officials, Meyer stated he was falling behind at Shipp Avenue, and he asked the union officials to forward him some resumes. Following the February 5 meeting, Johnson contacted King and notified him of possible employment at Respondent. On February 6, Johnson accompanied King to the Shipp Avenue site where they presented King's resume to Allinder. On February 7, Johnson emailed Meyer a copy of Shull and King's resumes. During this time period, Franklin contacted Cervi and Anders and asked if they wanted to drop off applications with Respondent. Franklin visited the WSU site with Cervi on February 9, at which time Cervi tendered his resume to James Allinder. Franklin faxed Cervi and Anders' resumes to Meyer on February 9. Franklin met with Stethem, Macke, and Cervi on February 10, at which point he gave the applicants Meyer's contact information.

Johnson and Zimmer visited the WSU jobsite on February 12, during which time they discussed union benefits and wages with Respondent's personnel working at the site. On February 17, King began working for Respondent, and on that date Johnson forwarded Huff and Ford's resumes to Meyer. Ford began working for Respondent on February 18, and Johnson referred Huff, Forsha, and Waldo to begin working for Respondent on February 20.

Johnson and Zimmer met with John Allinder, Williamson, and another of Respondents employees at a restaurant on February 19, during which time they discussed union wages and benefits with Respondent's personnel. Johnson gave Williamson a union sweatshirt during the meeting, and he subsequently gave one to Allinder. In fact, Allinder testified Johnson took him out to dinner on a couple of occasions during which Johnson discussed the Union with him and gave him union literature.

Zimmer and Johnson met with Meyer on February 20. During the course of the meeting, they discussed union wages and benefits with Meyer in trying to convince Meyer to enter a contract with the Union. When they discussed with Meyer including Meyer's non-union referrals within the confines of the Union's contract, Meyer balked stating those employees did not want a union. Meyer was informed the union officials had been in touch with Meyer's employees and had received information that they were interested in being union members. Shortly thereafter, Meyer terminated the meeting. Thus, the Union took a multi-pronged approach with Respondent in that it sought to convince Respondent of the benefits of hiring union employees

⁵⁶ Edwards' jobsite reports show Respondent was falling behind at Shipp Avenue beginning in mid January. Thus, as employee King credibly testified, Meyer informed King on February 9, that Edwards, the general contractor, had a problem with Respondent using union workers on the job. However, Meyer told King that he thought the problem would be resolved and that he thought King could start work the following week. I have concluded that, in order to maintain its schedule, Edwards eventually relented due to necessity to having union workers work at Shipp Avenue. Edwards' attitude is further reflected by its failure to initially cooperate in producing subpoenaed materials. I have viewed Respondent to be closely aligned with Edwards in its anti-union stance, and have not credited the testimony of Edwards' official Depriest to the extent it supports Respondent's defense concerning the termination of the seven employees, which I have otherwise found to be pretextual.

and entering the union contract while at the same time attempting to convince Respondent's other employees of the benefits of the Union in case of representation election was necessary. During this same time period, due to Respondent's immediate staffing needs, the Union was successful in gaining employment for some of its members should an election be necessary. I do not view the fact that, under the circumstances here, that Respondent acquiesced in hiring some of the Union's referrals separates this case from any other salting campaign.

Upon Zimmer and Johnson's realization that they were unable to convince Meyer to voluntarily recognize the Union, Johnson quickly reacted by filing a petition for election with the Region on February 23. Johnson called Meyer on that date and told him of the Union's filing. Johnson's testimony reveals that Meyer again reacted negatively to this information. Nevertheless, Johnson forwarded Meyer Stone's resume on February 23, to which Meyer responded that evening that he was not interested in Stone and he criticized the performance of the Union's prior referrals. At the time Johnson sent Meyer Stone's resume, Johnson knew there was very little likelihood that Meyer would hire any additional union referrals.⁵⁷

In furtherance of the Union's salting campaign, union referrals Huff and Waldo placed union stickers on a number of Respondent's power tools and ladders on February 25. The evidence reveals that on the morning of February 26, John Allinder showed up at the Shipp Avenue job site and told the six union members he was not going to distribute tools that morning because someone had placed union stickers on the tools. Allinder instructed the employees to wait until Meyer arrived. However, Waldo testified that after Allinder drove away, the employees called Johnson who instructed them to remain at the site. This further demonstrates employees were acting under Johnson's instructions. In this regard, Waldo also testified he recorded the February 26 conversations with Meyer and Allinder on a digital recorder provided to him by Johnson. Waldo and Johnson thereafter listened together to the recording of the conversation with Meyer, and Waldo returned the digital recorder to Johnson. Waldo testified he recorded the conversations because Johnson told him to. He did not know if the conversation with Allinder was audible on the recording.

Meuse testified Meyer called him around 11:30 a.m. on February 26, following the employees' discharge that morning. Meuse testified Johnson taped Meyer's phone call with Meuse. Meuse testified Johnson had a digital recorder with him at the time of the call. The transcript of the call reveals that Meuse was actually returning Meyer's prior call at the time the conversation was recorded. Meuse testified he and Johnson were having breakfast at a restaurant at the time Johnson taped the call.

Johnson testified the Union conducted a picket line at the Shipp Avenue job site, on February 27 and 28, and again on March 15, 16, and 17. The picket lines were attended by some of the terminated employees. On March 16, Johnson sent a certified letter to the Department of Inspections, Permits, and Licenses for the city of Louisville pointing out eight areas where Respondent allegedly failed to comply with industry standards for the installation of sprinklers. On the face of the letter, it is indicated it was copied to 16 government officials at various levels, as well as to Edwards Construction. Union official Zimmer also testified he instructed Franklin to make a FOIA request concerning Respondent's performance at that WSU jobsite.

⁵⁷ For reasons previously stated, I have concluded the General Counsel has failed to establish Stone was a bona fide applicant for employment.

In sum, I find the Union conducted a salting campaign at Respondent using overt and covert salts. The discriminatees here were salts in that they were employees and applicants directed to apply for work with Respondent by union officials, and those hired thereafter took orders from Johnson as to how they conducted themselves at the jobsite concerning their union activities in furtherance of the Union's organizational campaign. The fact that Respondent voluntarily hired some overt salts due to its pressing manpower needs does not change the fact that the Union used the salts to help organize other employees, that the salts operated under the Union's direction, and that the Union used other tactics such as filing complaints with applicable government officials as part of its efforts to pressure Respondent to recognize and bargain with the Union. See, *Flour Daniels, Inc.*, 353 NLRB No. 15, slip op. fn. 10; *Oil Capitol Sheet Metal*, 349 NLRB 1348, 1353 fn. 22 (2007); and *Tualatin Electric*, 312 NLRB 129, 130 fn. 3 (1993), enfd. 84 F.3d 1202 (9th Cir. 1996).

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CONCLUSIONS OF LAW

- 1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
- 2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

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- 3. The Respondent violated Section 8(a)(1) of the Act by threatening employees with job loss because of the Union's efforts to organize the employees and to obtain a contract with Respondent.
- 4. Respondent violated Section 8(a)(1) and (3) of the Act by :

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a. Discharging employees James Patrick King, Benjamin Waldo, Rick Forsha, Robert Huff, Larry Meuse, Josh McKim, and Robert Ford because of their affiliation with or attempt to organize for the United Association of Journeyman and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local #669, AFL-CIO.

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b. Refusing to consider for hire and/or refusing to hire Daniel Cervi, Travis Anders, Aaron Shull, Matthew Macke, and Michael Stetham, Jr. because of their affiliation with or intent to organize for the United Association of Journeyman and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local #669, AFL-CIO.

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- 5. The above unfair labor practices are unfair labor practices affection commerce within the meaning of Section 2(6), (7), and (8) of the Act.
- 6. All complaint allegations not found as violations here are dismissed.

REMEDY

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Having found that the Respondent discriminatorily discharged seven employees and discriminatorily refused hire three of the five applicants, the Respondent must make them whole for its unlawful conduct against them. The duration of their backpay period shall be determined in accordance with *Oil Capitol Sheet Metal*, 349 NLRB 1348 (2007). Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and interest shall be computed in accordance with *New Horizons for the Retarded*, 283 NLRB 1173 (1987).⁵⁸ While the recommended order provides for reinstatement for the discharged employees and instatement for three of the five applicants these awards are subject to defeasance, if at the compliance stage, the General Counsel fails to carry his burden of going forward with the

⁵⁸ The General Counsel asks that I alter traditional Board remedies pertaining to the calculation of interest. I find this is a matter for the Board to decide.

evidence that the discriminatees would still be employed by the Respondent if they had not been victims of discrimination. See, *BCE Construction*, 350 NLRB 1047, 1048 fn. 11 (2007), citing *Oil Capitol Sheet Metal*, supra. I note here Meyer's testimony revealed Respondent had no ongoing projects at the time the hearing closed. However, Meyer also testified certain named employees would be subject to recall for future projects. I find no basis to exclude the named discriminatees and three of the five applicants from Respondent's recall procedures as they all indicated a willingness to travel for Respondent, again subject to the limitations of the Board's pronouncements in the *Oil Capitol Sheet Metal* decision.

The General Counsel argues Respondent's policing of state licensing requirements for sprinkler fitters, particularly for the state of Ohio, was lax. Nevertheless, there was no evidence that Respondent knowingly had unlicensed personnel performing prohibited work in a particular state. Accordingly, and for public policy reasons, this order does not require Respondent to employ or grant backpay to any discriminatee for work performed in any state where they do not meet that state's licensing requirement for the work at issue. Finally, while the records supplied by Respondent may have been incomplete, the record shows there would have been employment for the discharged employees following their termination, and that, absent Respondent's discrimination, there would have been at least some work for three of the five applicants after February 20, the date I have concluded Respondent began to discriminate against union referred applicants.⁵⁹ I shall leave it to compliance to determine how that work should fairly be apportioned amongst the applicants as well as the discharged employees, as well as when and if these employees would have been be recalled when and if Respondent obtained or obtains future work.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁶⁰

ORDER

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The National Labor Relations Board orders that Respondent, Classic Fire Protection, LLC, with an office and place of business in Westerville, Ohio, its officers, agents, successors, and assigns shall

- Cease and desist from
- (a) Threatening employees with job loss because of the Union's efforts to organize its employees and to obtain a contract with Respondent.
 - (b) Refusing to consider for hire and refusing to hire applicants who show an affiliation with, or an intent to organize for the United Association of Journeyman and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local #669, or any other labor organization.
 - (c) Discharging employees because of their protected and union activities.

February 20. However, I have concluded their backpay and possible instatement rights run from February 20. Their applications were relatively current to February 20, and Respondent has not established any timeliness issue for their consideration for and right to future employment after that date based on those applications.

⁶⁰ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

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(d) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed them by Section 7 of the Act.

- 2. Take the following affirmative actions necessary to effectuate the policies of the Act.
- (a) Within 14 days from the date of this Order, offer employment to three of the five named individuals, Daniel Cervi, Travis Anders, Matthew Macke, Michael Stetham, Jr. and Aaron Shull, who the Board determines at the compliance stage of the Board's proceedings should have been hired to positions they would have been entitled absent the discrimination against them, without prejudice to their seniority or any other rights or privileges, displacing, if necessary, any employees or contract workers occupying those positions.
- (b) Make whole three of the five named individuals, Daniel Cervi, Travis Anders, Aaron Shull, Matthew Macke, and Michael Stetham, Jr. for losses sustained by reason of the discrimination against them as determined in the Board's compliance proceedings.
- (c) Within 14 days from the date of this Order, offer James Patrick King, Benjamin Waldo, Rick Forsha, Robert Huff, Larry Meuse, Josh McKim, and Robert Ford full reinstatement positions to which they would have been entitled, absent the discrimination against them, without prejudice to their seniority or any other rights or privileges previously enjoyed, displacing, if necessary any employees or contract workers occupying those positions.
- (d) Make James Patrick King, Benjamin Waldo, Rick Forsha, Robert Huff, Larry Meuse, Josh McKim, and Robert Ford whole for any loss of earnings or other benefits suffered as a result of their unlawful discharge.
- (e) Within 14 days from the date of this Order, notify, in writing, the five applicants who applied for employment with Respondent, and who were unlawfully denied consideration for employment, that any future job applications will be considered in a nondiscriminatory manner.
- (f) Within 14 days from the date of this Order, expunge from its records all reference to the unlawful actions taken against the five applicants for employment and seven dischargees, and within 3 days thereafter advise them in writing that this has been done and that these actions shall not be used against them in any manner in the future.
- (g) Preserve and, within 14 days of a request or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board, or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.
- (h) Within 14 days after service by the Region, post at its facility in Westerville, Ohio, and at each of its various job locations copies of the attached notice marked "Appendix A." ⁶¹ Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business, closed the facility involved in these proceedings, it shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 7, 2009. Similarly, Respondent shall duplicate and mail, at its own expense copies of the attached notice to all employees who are on layoff, and former employees who have left Respondent's employ since February 7, 2009.

⁶¹ If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

(i) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply. Dated, Washington, D.C. February 26, 2010 Eric M. Fine Administrative Law Judge

APPENDIX A

NOTICE TO EMPLOYEES

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Posted by Order of the National Labor Relations Board An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT threaten employees with job loss because of their affiliation with and support of a union that is trying to organize our employees and seeking a collective-bargaining agreement with us.

WE WILL NOT refuse to employ or consider for employment anyone because of our belief that the applicant may engage in organizing activity for the United Association of Journeyman and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local #669, or any other labor organization.

WE WILL NOT discharge employees because of their protected and union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of rights guaranteed them by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer employment to three of the five named individuals: Daniel Cervi, Travis Anders, Matthew Macke, and Michael Stetham, Jr. and Aaron Shull, who the Board determines at the compliance stage of the Board's proceedings should have been hired to positions they would be been entitled to, absent the discrimination against them, without prejudice to their seniority or any other rights or privileges, displacing, if necessary, any employees or contract workers occupying those positions, if those positions currently exist.

WE WILL make three of the five named individuals: Daniel Cervi, Travis Anders, Aaron Shull, Matthew Macke, and Michael Stetham, Jr., as determined in the Board's compliance proceedings, whole for any loss of earnings and other benefits suffered as a result of our refusal to hire them.

WE WILL, within 14 days from the date of the Board's Order, notify in writing the five above named individuals who applied for employment that any future job applications will be considered in a nondiscriminatory manner.

WE WILL, within 14 days from the date of the Board's Order, offer employment to James Patrick King, Benjamin Waldo, Rick Forsha, Robert Huff, Larry Meuse, Josh McKim, and Robert Ford to the positions they would have held absent the discrimination against them, without prejudice to their seniority or any other rights or privileges they would have enjoyed, displacing, if necessary, any employees or contract workers occupying those positions, if those positions currently exist.

WE WILL make James Patrick King, Benjamin Waldo, Rick Forsha, Robert Huff, Larry Meuse, Josh McKim, and Robert Ford whole for any loss of earnings and other benefits suffered as a result of our discharge of them.

5 WE WILL expunge from our records all reference to actions taken against the five applicants and seven discharged employees named above and advise them in writing that this has been done, and that such actions shall not be used against them in any manner in the future. 10 CLASSIC FIRE PROTECTION, LLC. 15 (Employer) By (Title) 20 The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's 25 Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov. 550 Main Street, Federal Office Building, Room 3003 Cincinnati, Ohio 45202-3271 Hours: 8:30 a.m. to 5 p.m. 513-684-3686. 30 THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED. DEFACED, OR COVERED BY ANY OTHER MATERIAL, ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 513-684-3750. 35 40 45

Appendix B

G. C. Exh. 51 shows checks written on Respondent's account covering the period of September 2008 to July 2009. Most of the checks are summarized with the notations on them as legible as set forth below:

	Date Name	Amount	Location
	9/19 John Allinder	\$920	Shipp Ave labor
	9/29 Joe Pine	\$918	Shipp Ave
10	9/29 John Allinder	\$1104	Shipp Ave
. •	10/3 John Allinder	\$713	WŚŪ
	10/3 Joe Pine	\$425	Shipp Ave
	10/9 John Allinder	\$598	Shipp Ave
	10/9 Joe Pine	\$442	wsù
15	10/16 John Allinder	\$575	WSU
10	10/16 Joe Pine	\$310	WSU
	10/27 Joe Pine	\$783	Shipp Ave, + per diem
	10/27 John Allinder	\$1186	Shipp Ave w/e 10/27 per diem, expenses
	11/3 Joe Pine	\$754	Shipp Ave
20	11/3 John Allinder	\$555	November expense + receipt Shipp Ave
_0	12/5 Travis Osborne	\$711.41	
	12/5 Travis Redman	\$ 7 95	
	12/12 Amanda Camp	\$1300	Labor for 1 st title
	12/12 Travis Osborne	\$627	w/e 12/16 WSU
25	12/12 Meuse	\$544	w/e 12/13 Louisville
20	12/12 Travis Redman	\$1102	w/e 12/6 WSU
	12/13 Josh McKim	\$547	w/e 12/13 Louisville
	12/18 Redman	\$900	w/e 12/19 sub labor
	12/19 Jordan Williamso	•	labor 30 hours
30	12/19 John Allinder	\$750	labor w/e 12/19
00	12/19 Osborne	\$692	w/e 12/19 sub labor
	12/19/08 Williamson	\$440	
	12/23 Cash	\$1500	Sub work Dayton
	12/28 McKim	\$1200	sub work Louisville w/e 12/26
35	12/28 Meuse	\$1224	sub work Louisville, w/e 12/26
00	12/31 Cash	\$2500	Sub work paid in Cash
	12/31 Travis Redman	\$500	WSU ⁶²
	1/5/09 Cash	\$500	MECC
	1/9/09 Amanda Camp	\$600	MECC
40	1/27 A. Camp	\$300	Nail Salon
40	2/2 Coffey	\$106.49	Nail Salon receipts
	2/2 James Allinder	\$160	WSU per diem
	2/4 Williamson	\$440	per diem
	2/4 John Allinder	\$879	expenses, per diem, receipts
45	2/5 James Allinder	\$317	receipts.
10	2/6 A. Camp	\$1000	Ralph Williams IT
	2/14 Redman	\$480	·
	2/12 ? Cash	\$700	Sub labor Ralph Williamson
	2/24 Cash	\$600	Labor and per diem
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⁶² Meyer testified Redman is a sprinkler fitter.

	2/28 John Allinder 2/28 Jordan Williamson 3/3 Foody 3/3 Dewayne Shull	\$780 \$480 \$640 \$240	per diem Louisville 24 days per diem, Louisville sub labor w/e 2/28
5	3/4 Cash	\$150	per diem
	3/9 Travis Griffin	\$480	sub labor, paid in full
	3/10 Foody	\$760	Sub labor ending 3/7
	3/13 James Allinder	\$400	vehicle repair, per diem
	3/14 Brian Cummings	\$400	Sub Labor WSU
10	3/17 Foody	\$1220	sub labor week ending 3/13
	3/18 Cash	\$1000	sub labor Ralph Williamson
	3/18 James Allinder	\$140	per diem Louisville
	3/24 Cash	\$2200	new , per diem
	3/26 K. Foody	\$990	sub labor
15	3/27 Terry Lowe	\$3400	Shipp Ave sub labor
	3/27 Jerry Seibel	\$320	sub labor, Louisville
	4/2 Foody	\$930	\$770 sub labor, \$160 per diem
	4/2 Seibel	\$677.50	sub labor 58.5 hours
	4/3 Cash	\$3200	Sub labor Terry Lowe, Shipp Ave
20	4/3 Brian Cummings 4/17 Cash 4/7 Seibel 4/7 Jordan Williamson 4/7 Ken Foody	\$770 \$3300 \$400 \$430 \$680	77 hours WSE ending 3/21, 3/23 sub labor, Terry Lowe U of L sub labor, w/e 4/3 24 days per diem, March sub labor w/e 4/4
25	4/7 John Allinder 4/7 Brian Cummings 4/17 Foody 4/17 Seibel 4/17 Brian Cummings	\$420 \$400 \$720 \$520 \$260	per diem March sub labor, w/e 4/9 sub labor, 4 days per diem 48 hrs, sub labor U of L Sub labor- WSU
30	4/22 Seibel 4/22 Raymond Hayes 4/22 Foody 4/27 Cummings 5/1 Seibel	\$452 \$185 \$950 \$260 \$240	Sub Labor week ending, 4/18 Sub Labor Week ending 4/18 sub labor w/e 4/18, 4 day per diem sub labor w/e 4/18 sub labor w/e 4/26
35	5/1 Hayes	\$240	sub labor w/e 4/26
	5/1 Cash	\$6000	sub labor Terry Lowe
	5/1 Cummings	\$480	sub labor ending 4/25
	5/8 Cummings	\$400	sub labor WSU
	5/8 Foody	\$1258.67	Sub labor Rule 3, + receipts
40	5/8 Cash	\$1000	sub labor Shipp Ave
	5/10 Seibel	\$160	sub labor Shipp Ave
	5/10 Hayes	\$160	sub labor Shipp Ave
	5/13 Foody	\$720	Sub labor Rule 3
	5/15 Cummings	\$370	sub labor w/e 5/9
45	5/19 Raymond Hayes	\$70	w/e 5/16 Shipp Ave
	5/19 Seibel	\$80	w/e 5/16 Shipp Ave
	5/20 John Allinder	\$300	April per diem
	5/20 Jordan Williamson	\$300	April per diem
	5/22 Foody	\$720	Sub labor, Rule 3
50	5/22 Foody 5/22 Seibel 5/22 Hayes 5/28 Foody	\$160 \$160 \$880	Sub labor, Rule 3 Sub labor Shipp Ave Sub labor Shipp Ave sub labor Rule 3 w/e 5/23

5	5/29 Cummings 6/4 Cash 6/4 Foody 6/10 Cummings 6/15 Foody 6/18 Cummings	\$400 \$3000 \$800 \$320 \$480 \$400	sub labor WSU sub labor Shipp Ave sub labor Rule 3 sub labor
10	6/20 Jordan Williamson 6/25 Cummings 7/6 Cummings 7/9 Cummings 7/10 Cash 7/16 Cummings 7/22 Cash	\$110 \$420 \$280 \$300 \$1000 \$240 \$3000	per diem, vehicle expenses Sub labor,drilling, per diem
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UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD DIVISION OF JUDGES

CLASSIC FIRE PROTECTION, LLC

and

Case Nos. 9-CA-44812 9-CA-44814 9-CA-44926

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 669, AFL-CIO

Eric Taylor, Esq., and Jamie Ireland, Esq., for the General Counsel

Mack Zimmer, Organizer
of Evansville, Indiana for the Charging Party

Paul L. Jackson, Esq., of Akron, Ohio
for the Respondent

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	 The February 25 and 26 discharge of the seven employees The Refusal to hire case Analysis The terminated employees and union referred job applicants were salts Conclusions of Law

Appendix A Appendix B